

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/STOP PRESS: WELFARE REFORM ACT 2009

SOCIAL SERVICES AND COMMUNITY CARE (

STOP PRESS:

The Welfare Reform Act 2009 amends the law relating to social security, enables disabled people to be given greater control over the way in which certain public services are provided for them, amends the law relating to child support, and makes provision regarding the registration of births. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 11, 2, 8, 11, 23, 27, 29, 37, 57, 59-62, Sch 3. Sections 15, 34, 38-50, 58(2), (3) and Sch 7 Pt 2 (in part) came into force on 12 January 2010: s 61. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-37) Social security

Section 1 enables the Secretary of State to impose a requirement on claimants of jobseeker's allowance to participate in schemes designed to assist them to obtain employment, and in particular to require claimants to undertake work as part of a 'work for your benefit' scheme. Under s 2, the Secretary of State may require lone parents in receipt of income support to undertake work-related activity in certain circumstances as a condition of continuing to receive the full amount of benefit. Section 2 also requires the Secretary of State to provide persons in receipt of specified benefits who are required to attend work-focused interviews with an action plan. Section 3 makes provision exempting specified categories of lone parents from the requirement to attend work-focused interviews and undertake work-related activity. Section 4, Sch 1 deal with the entitlement of certain claimants to jobseeker's allowance without seeking employment, and s 5 removes entitlement to income support and income-related employment and support allowance for couples where one member is capable of work. Section 6 enables the Secretary of State to permit persons in receipt of statutory sick pay to claim income-related employment and support allowance instead of income support. Section 7 makes transitional provision and s 8 deals with the Parliamentary procedure for regulations imposing work-related activity requirements on lone parents of children under seven. Provision is made for income support to be abolished when there are no longer any groups of people that require it: s 9, Sch 2. By virtue of s 10, the Secretary of State may specify a work-related activity which a claimant of employment and support allowance in the work-related activity group must undertake as a condition of continuing to be entitled to the full amount of his allowance. Section 11, Sch 3 provide for claimants of jobseeker's allowance and employment support allowance who are dependent on drugs, and ss 12, 13 amend the contribution conditions for jobseeker's allowance and contributory employment and support allowance. The entitlement conditions for the higher rate mobility component of disability living allowance are amended by s 14 so as to entitle persons with a prescribed severe visual impairment, and s 15 abolishes the payment of adult dependency increases for all new claims for maternity allowance and carer's allowance. Under s 16, the Secretary of State may make arrangements with external providers to make loans to individuals who are receiving prescribed benefits or have prescribed needs ('external provider social loans'), and under s 17 he has power to restrict the availability of social fund loans in areas where external provider social loans are available. Section 18 deals with the supply of

information in connection with external provider social loans. Sections 19, 20 provide that where goods and services covered by a community care grant are provided under arrangements that the Secretary of State has made with a supplier, he may require the grant to relate to specified goods or services and the payment of the grant to be made to that supplier. Section 21 provides for Parliamentary control of regulations relating to unauthorised disclosure of information in relation to external provider social loans or community care grants. By virtue of s 22, the Secretary of State may extend the range of situations in which payments of benefits on account can be made, and s 23 enables him to up-rate benefits for the tax year 2009-2010 even if the general level of prices has not increased. Section 24, Sch 4 extend the provisions relating to the loss of benefit where a claimant is convicted of benefit fraud, and s 25 introduces new benefit sanctions against claimants of jobseeker's allowance who are convicted of violent conduct in connection with their claim. A pilot scheme under which benefit sanctions have been applied to certain offenders who are in breach of specified community orders is brought to an end by s 26, and provision is made by s 27 for new pilot schemes for the calculation and payment of state pension credit to increase the number of eligible persons receiving the benefit. Section 28 extends the time limits for certain pilot schemes relating to working-age benefits, and s 29 provides for the exemption of victims of domestic violence from the jobseeking conditions of jobseeker's allowance for a prescribed period. Section 30 provides that where regulation-making powers in specified provisions enable circumstances to be prescribed that constitute good cause for failing to undertake mandatory activities, the regulations must always include the availability of childcare and the claimant's physical or mental health in the list of circumstances that must be taken into account. The well-being of children must be taken into account when agreeing the activities that a parent will undertake as part of a jobseeker's agreement or action plan for recipients of employment and support allowance: s 31. By virtue of s 32, specified functions of the Secretary of State under the Jobseeker's Act 1995 may be contracted out. Section 33 provides for the continuation of entitlement to jobseeker's allowance where a claimant fails to attend a mandatory interview without showing good cause for the failure to attend, subject to a delay in payment for a fixed period. Section 34 expands the scope of the sharing of social security and employment training information, and s 35 makes provision regarding the age at which persons will be required to attend work-focused interviews to reflect the equalisation of the state pension age for men and women. Section 36 requires the renaming of council tax benefit as council tax rebate, and s 37 makes minor legislative amendments.

Part 2 (ss 38-50) Disabled people: right to control provision of services

Section 38 states the purpose of the 2009 Act Pt 2 as being to enable disabled people to have a greater choice and control over the way in which relevant services are provided for them by defined public authorities. 'Relevant services' are defined in s 39 and public authorities are defined in s 40. Section 41 provides a general power for an appropriate authority to make regulations for the purpose of Pt 2, while s 45 defines 'appropriate authority' for these purposes, s 46 makes supplementary provision, and s 47 requires consultation on any proposed regulations. Section 42 sets out the provisions that may be included in regulations dealing with direct payments to disabled people. Section 43 provides for the making of regulations for the exercise of the rights to control the provision of services on behalf of persons who lack capacity within the meaning of the Mental Capacity Act 2005. Section 44 deals with the establishment of pilot schemes, and s 48 empowers the Secretary of State to repeal the exclusion of community care services from the definition of relevant services. Section 49 deals with the control of regulations and orders by Parliament, and s 50 deals with interpretation.

Part 3 (ss 51-55) Child maintenance

Section 51, Sch 5 permit the Child Maintenance and Enforcement Commission ('the Commission') to order the disqualification of a person who has arrears of child maintenance from holding a driving licence or travel authorisation without applying to the court, and makes provision for appeals to the court against such disqualification orders. Sections 52, 53 provide for the Commission to pilot the powers of disqualification for two years and require the Secretary of State to report to Parliament on the operation of the pilot schemes. By virtue of s 54, the Commission may specify the intervals at which child support maintenance payments are made, having regard to the preferences indicated by the parent who does not reside with the children concerned. Section 55 extends the scope of offences relating to the provision of information.

Part 4 (s 56) Birth registration

Section 56, Sch 6 make provision for the joint registration of births where the parents of a child are neither married to each other nor civil partners of each other so as to increase the ways in which an unmarried father may register jointly with the child's mother, and confer additional rights and duties on both unmarried parents to enable unmarried fathers' details to be entered on the birth register in as many cases as possible.

Part 5 (ss 57-62) General

Section 57 empowers the Secretary of State to make consequential amendments and revocations of subordinate legislation, and repeals and revocations are made by s 58, Sch 7. Sections 59-62 deal with financial provisions, extent, commencement and short title.

Amendments, repeals and revocations

The list below, which is not exhaustive, mentions amendments which are or will be effective when the Act is fully in force.

Specific provisions of a number of Acts are substituted, added or repealed. These include: Births and Deaths Registration Act 1953 ss 1, 2, 2A-2E, 6, 10, 10A-10C, 39A; Child Support Act 1991 ss 39B, 39CA, 39CB, 39DA, 39F, 39G, 40B; Social Security Administration Act 1992 ss 2B, 2D-2H, 78A, 108, 122G, 122H; Social Security Contributions and Benefits Act 1992 ss 124, 126, 127, 140ZA-140ZC; Jobseeker's Act 1995 ss 1A, 1B, 11A-11C, 15B, 17A-17C, 18A-18D, 19, 20, 20A-20E, Sch A1; Welfare Reform and Pensions Act 1999 s 60; Child Support, Pensions and Social Security Act 2000 ss 62-66; Social Security Fraud Act 2001 ss 6A-6C; State Pension Credit Act 2002 s 18A; Welfare Reform Act 2007 s 15A, Sch 1A; Child Maintenance and Other Payments Act 2008 s 30.

The National Assembly for Wales and the Welsh Ministers; transfer of functions

The Government of Wales Act 1998 established the National Assembly for Wales, and transferred specified functions, with or without modifications, and subject in some cases to supplementary provisions, to it. The Government of Wales Act 2006 re-establishes the National Assembly for Wales and establishes the Welsh Assembly Government, and transfers specified functions, with or without modifications, and subject in some cases to supplementary provisions, to the Welsh Ministers. See generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Certain functions of a Secretary of State or a minister of the Crown are exercisable concurrently with the National Assembly for Wales in so far as they are exercisable in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. That

order transfers specified functions, with or without modifications, and subject in some cases to supplementary provisions, under the National Assistance Act 1948; the Chronically Sick and Disabled Persons Act 1970 (with specified exceptions); the Health and Social Services and Social Security Adjudications Act 1983 (except Sch 8); the Disabled Persons (Services, Consultation and Representation) Act 1986; the Carers (Recognition and Services) Act 1995; the Community Care (Direct Payments) Act 1996.

See also Health and Social Care Act 2012 s 68 (powers of National Assembly for Wales under amended Acts).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(1) IN GENERAL/1001. Social services provision.

1. INTRODUCTION

(1) IN GENERAL

1001. Social services provision.

Local authorities¹ have duties under the National Health Service and Community Care Act 1990 to prepare, publish and review plans for the provision of community care services², to assess the needs of certain categories of persons for community care services³ and to decide what services, if any, to provide to such individuals⁴. Under the Carers (Recognition and Services) Act 1995 local authorities must also assess, if requested, the ability of carers to provide and continue to provide care⁵. Local authorities have powers and, where directed by the Secretary of State⁶, duties under Part III of the National Assistance Act 1948⁷ to make arrangements for providing residential accommodation for persons in need of care and attention⁸ and to make arrangements to promote the welfare of persons under certain disabilities⁹. There are also powers under the National Assistance Act 1948 to remove persons in need of care and attention from premises where they reside to a suitable hospital or other place¹⁰. Under the Chronically Sick and Disabled Persons Act 1970 a local authority having certain functions under the National Assistance Act 1948¹¹ has, in addition, a duty in the case of any person¹² resident in its area to make arrangements for providing certain assistance and facilities, if satisfied that it is necessary in order to meet his needs¹³. Particular duties are owed to disabled persons under the Chronically Sick and Disabled Persons Act 1970 and the Disabled Persons (Services, Consultation and Representation) Act 1986¹⁴. Local authorities may with the approval of the Secretary of State, and to such extent as he may direct must, make arrangements (1) under the Health Services and Public Health Act 1968, for promoting the welfare of old people¹⁵; and (2) under the National Health Service Act 1977, for the care of expectant and nursing mothers¹⁶, the prevention of illness and the care and after-care of persons suffering from illness¹⁷. Under the Mental Health Act 1983 there is a duty to provide after-care services for certain categories of mentally disordered patients¹⁸. Local authorities also have a duty under the National Health Act 1977 to provide or arrange for the provision of home help and laundry facilities¹⁹.

Under the Registered Homes Act 1984 local authorities have functions in relation to the registration, conduct and inspection of residential care homes²⁰ which provide board and care for persons who are in need of care by reason of old age, disablement, dependence on alcohol or drugs, or mental disorder²¹.

Local authorities must inform themselves as to the number of persons in their area who are blind, deaf, dumb, mentally disordered or otherwise substantially and permanently handicapped and of the need for making welfare arrangements for such persons and must publish information in relation to the services which they provide or arrange²². Local authorities may also carry out research or assist others in conducting research into matters relating to their social services functions²³. Provision is made for training in social work²⁴.

The provision of social services is currently under review²⁵.

1 As to the meaning of 'local authority' see PARA 1005 post.

2 See the National Health Service and Community Care Act 1990 s 46 (as amended); and PARA 1013 post. For the meaning of 'community care services' see PARA 1012 post.

- 3 See *ibid* s 47(1)(a); and PARA 1015 post.
- 4 See *ibid* s 47(1)(b); and PARA 1015 post.
- 5 See the Carers (Recognition and Services) Act 1995 s 1; and PARA 1016 post.
- 6 In one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. For the purposes of this title, the relevant Secretary of State is generally the Secretary of State for Health. For the purposes of the Disability (Grants) Act 1993 (see PARA 1010 post) and the Jobseekers Act 1995 s 30 (see PARA 1081 post), however, the Secretary of State is the Secretary of State for Social Security; for the purposes of the Disabled Persons Act 1981 (see PARAS 1066-1068 post), the Secretary of State is the Secretary of State for the Environment; and for the purposes of the Chronically Sick and Disabled Persons Act 1970 s 20 (as amended) (see PARA 1070 post), s 21 (as amended) (see PARA 1071 post), the Secretary of State is the Secretary of State for Transport.
- 7 In the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post).
- 8 See *ibid* s 21 (as amended); and PARA 1029 et seq post.
- 9 See *ibid* s 29 (as amended); and PARA 1020 et seq post.
- 10 See *ibid* s 47 (as amended); and PARA 1074 et seq post.
- 11 In under *ibid* s 29 (as amended): see PARA 1020 et seq post. For the purposes of the National Assistance Act 1948, 'functions' includes powers and duties: s 64(1).
- 12 In any person to whom *ibid* s 29 (as amended) applies: see PARA 1020 post.
- 13 See the Chronically Sick and Disabled Persons Act 1970 s 2 (as amended); and PARA 1023 post.
- 14 See PARAS 1015-1017, 1023, 1064, 1072-1073 post.
- 15 See the Health Services and Public Health Act 1968 s 45 (as amended); and PARA 1024 post.
- 16 See the National Health Service Act 1977 s 21(1)(a), Sch 8 para 1 (both as amended); and PARA 1025 post.
- 17 See *ibid* s 21(1)(b), Sch 8 para 2 (as amended); and PARA 1026 post.
- 18 See the Mental Health Act 1983 s 117 (as amended); and PARA 1028 post.
- 19 See the National Health Service Act 1977 s 21(1)(c), Sch 8 para 3 (as amended); and PARA 1027 post.
- 20 As to the meaning of 'residential care home' see PARA 1042 post.
- 21 See PARA 1042 et seq post.
- 22 See the Chronically Sick and Disabled Persons Act 1970 s 1 (as amended); and PARA 1017 post.
- 23 See the National Assistance Act 1948 s 30A (as added); the National Health Service Act 1977 Sch 8 para 4 (as added); and PARA 1004 post.
- 24 See the Health and Social Services and Social Security Adjudications Act 1983 s 10, Sch 3 (as amended); and PARAS 1002-1003 post.
- 25 As to the proposed future reform of the statutory framework for the provision of social services see the government White Paper *Social Services: Achievement and Challenge* (Cm 3588) (1997).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in

England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1001 Social services provision

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

TEXT AND NOTES 20, 21--Registered Homes Act 1984 replaced by Care Standards Act 2000.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(1) IN GENERAL/1001A. Registration in respect of provision of social services or social care

1001A. Registration in respect of provision of social services or social care

1. Registration authorities in England

The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) (in force in part) creates a system of registration for providers and managers of health and adult social care. The health and social care activities (to be known as 'regulated activities') which will trigger the requirement to register with the Care Quality Commission are to be defined by regulations (see, in relation to England, the Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009, SI 2009/660), and must not involve the provision of care which is regulated by Her Majesty's Chief Inspector of Education, Children's Services and Skills (see below): see the Health and Social Care Act 2008 s 8. For these purposes 'health care' includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition: s 9(2). 'Social care' includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance: s 9(3). 'Health or social care' means health care or social care: s 9(4). Any person who carries on a regulated activity without being registered in respect of the carrying on of that activity is guilty of an offence and is liable, on summary conviction, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 12 months, or to both; and on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 12 months, or to both: see s 10. As to the process for applying to register with the Commission, see s 11. The Commission can only register an applicant if it is satisfied that the applicant is meeting, and will continue to meet, the requirements the Secretary of State has set down in regulations under s 20 (see PARA 1001A.3), as well as any other legislative requirements the Commission considers are relevant: see s 12(1), (2). The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit: s 12(3). On granting the application, the Commission must issue a certificate of registration to the applicant: s 12(4). The Commission may at any time vary or remove any condition for the time being in force in relation to a person's registration as a service provider, or impose any additional condition: s 12(5). Section 12(3) and (5) have effect subject to s 13 (see PARA 1001A.1): s 12(6) (not yet in force).

For the purposes of the Care Standards Act 2000, the registration authority in relation to England, in the case of establishments and agencies mentioned below, is Her Majesty's Chief Inspector of Education, Children's Services and Skills: Care Standards Act 2000 s 5(1)(a) (substituted by the Health and Social Care Act 2008 Sch 5 para 6(2) (not yet in force)). The establishments and agencies are (1) children's homes in England; (2) residential family centres in England; (3) fostering agencies in England or, where the activities of a fostering agency are carried on from two or more branches, the branches in England; (4) voluntary adoption agencies whose principal office is in England; and (5) adoption support agencies in England or, where the activities of an adoption support agency are carried on from two or more branches, the branches in England: Care Standards Act 2000 s 5(1A) (added by the Health and Social Care Act 2008 Sch 5 para 6(3) (not yet in force)). This is subject to the Care Standards Act 2000 s 36A (voluntary adoption agencies: distribution of functions): s 5(2) (added by Adoption and Children Act 2002 Sch 3 paras 103, 105).

2. Registration of managers

The following provisions are not yet in force unless otherwise stated.

The registration under the Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) of a person ('S') as a service provider in respect of a regulated activity (see PARA 1001A.1) must in prescribed cases be subject to a registered manager condition: s 13(1). In deciding whether to impose a registered manager condition under s 12(3) or (5) (see PARA 1001A.1), in a case where s 13(1) does not require such a condition to be imposed, the Care Quality Commission must have regard to prescribed matters: s 13(2). For these purposes, a registered manager condition is a condition that the activity as carried on by S, or the activity as carried on by S at or from particular premises, must be managed by an individual who is registered under Pt 1 Ch 2 as a manager in respect of the activity, or the activity as carried on at or from those premises: s 13(3).

A person seeking to be registered as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Commission, which must be made in such form, and contain or be accompanied by such information, as the Commission requires: see s 14. Where an application under s 14 has been made in accordance with the provisions of Pt 1 Ch 2 with respect to a regulated activity in respect of which a person is registered as a service provider and in respect of which a registered manager condition has effect, the following provisions apply: s 15(1). If the Commission is satisfied that the requirements of regulations under s 20 (see PARA 1001A.3), and the requirements of any other enactment which appears to the Commission to be relevant, are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it: s 15(2). The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit: s 15(3). On granting the application, the Commission must issue a certificate of registration to the applicant: s 15(4). The Commission may at any time vary or remove any condition for the time being in force in relation to a person's registration as a manager, or impose any additional condition: s 15(5).

Regulations may make provision about (1) the keeping by the Commission of registers; (2) the making of applications for registration as a service provider or manager; (3) the registration of persons as service providers or managers; and (4) the notification by registered persons to the Commission of an address for service of documents: s 16 (in force).

The Commission may at any time cancel the registration of a person ('R') as a service provider or manager in respect of a regulated activity: (a) on the ground that R has been convicted of, or admitted, a relevant offence; (b) on the ground that any other person has been convicted of any relevant offence in relation to the regulated activity; (c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements; (d) on the ground that R has failed to comply with a requirement imposed by or under Pt 1 Ch 6 (ss 60-97); (e) on any ground specified by regulations: s 17(1) (in force). For these purposes, the following are relevant offences (i) an offence under Pt 1 (ss 1-97) or under regulations made under it; (ii) an offence under the Registered Homes Act 1984 or regulations made under it; (iii) an offence under the Care Standards Act 2000 Pt 2 (ss 11-42) or regulations made under it; and (iv) any other offence which appears to the Commission to be relevant: s 17(3) (in force). 'Relevant requirements' means any requirements or conditions imposed by or under Pt 1 Ch 2, and the requirements of any other enactment which appears to the Commission to be relevant: s 17(4) (in force). The Commission must cancel the registration of a person as a manager in respect of a regulated activity if no-one is registered as a service provider in respect of the activity, or the registration of a person as a service provider in respect of the activity ceases to be subject to a registered manager condition: s 17(2) (not yet in force). The Commission also has the power to suspend a person's registration as a service provider or a manager for a fixed period of time if they are failing to comply with the

requirements of Pt 1 Ch 2 or Pt 1 Ch 6, or requirements of any other legislation: see s 18 (in force).

Except in case A or B below, a person registered as a service provider or manager ('R') may apply to the Commission (A) for the variation or removal of any condition for the time being in force in relation to the registration, other than a registered manager condition required by s 13(1) above; (B) for the cancellation of the registration; or (C) for the cancellation of, or the variation of the period of, any suspension of the registration: s 19(1) (in force). Case A is where the Commission has given R notice under s 26(4)(a) (see PARA 1001A.4 head (1)) of a proposal to cancel the registration, and the Commission has not decided not to take that step: s 19(2) (in force). Case B is where the Commission has given R notice under s 28(3) of its decision to cancel the registration, and either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined: s 19(3) (in force). An application under s 19(1) must be made in such form, and contain or be accompanied by such information, as the Commission requires: s 19(4). If the Commission decides to grant an application under head (A), it must serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration: s 19(5) (in force). If the Commission decides to grant an application under head (C), it must serve notice in writing of its decision on the applicant (stating, where applicable, the period as varied): s 19(6) (in force). As to service of documents see s 93 (in force) (amended by SI 2009/3023), and as to electronic communications see the Health and Social Care Act 2008 s 94 (in force).

The Commission may with the consent of the Secretary of State from time to time make and publish provision (I) requiring a fee to be paid in respect of an application for registration as a service provider or manager, the grant or subsistence of any such registration, or an application under s 19(1); and (II) requiring English local authorities, persons registered under Pt 1 Ch 2 and such other persons as may be prescribed to pay a fee in respect of the exercise by the Commission of such of its other functions as may be prescribed: s 85(1) (s 85 in force). For the meaning of 'English local authority' see PARA 1011A.3. The amount of a fee payable is to be such as may be specified in, or calculated or determined under, the provision, and may include provision for different fees to be paid in different cases, for different fees to be paid by persons of different descriptions, for the amount of a fee to be determined by the Commission in accordance with specified factors, and for determining the time by which a fee is to be payable: s 85(2), (3). Before making provision under s 85(1) the Commission must consult such persons as it thinks appropriate: s 85(4). If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the Commission by virtue of this provision, and the time at which it is payable, instead of those matters being determined in accordance with provision made under s 85(1): s 85(5). Before making any such regulations, the Secretary of State must consult the Commission and such other persons as the Secretary of State thinks appropriate: s 85(6). For the purpose of determining the fee payable by a person by virtue of this provision, the person must provide the Commission with such information, in such form, as the Commission may require: s 85(7). A fee payable by virtue of this provision may, without prejudice to any other method of recovery, be recovered summarily as a civil debt: s 85(8).

Regulations may require the person carrying on a regulated activity to make a return to the Commission at such intervals as may be prescribed, and provision may be made as to the contents of the return and the period in respect of which and date by which it is to be made: s 40 (in force). Regulations may be made to deal with the process that applies when companies or individuals that are registered as service providers go into liquidation or receivership, or are declared bankrupt: see s 41 (in force). Regulations may also require the Commission to be notified if a person who is registered as a service provider dies: see s 42 (in force).

3. Regulation, code of practice and guidance

Regulations may impose in relation to regulated activities (see PARA 1001A.1) any requirements which the Secretary of State thinks fit for the purposes of the Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44): s 20(1). The regulations may in particular make provision with a view to securing that any service provided in the carrying on of a regulated activity is of appropriate quality, and securing the health, safety and welfare of persons for whom any such service is provided: s 20(2). The regulations may in particular:

- 1 (1) make provision as to the persons who are fit to carry on or manage a regulated activity;
- 2 (2) make provision as to the manner in which a regulated activity is carried on;
- 3 (3) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;
- 4 (4) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;
- 5 (5) make provision as to the fitness of premises;
- 6 (6) impose requirements as to the keeping of records and accounts;
- 7 (7) impose requirements as to the provision of information;
- 8 (8) impose requirements as to the financial position of a person registered as a service provider;
- 9 (9) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
- 10 (10) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;
- 11 (11) make provision as to the handling of complaints and disputes and the application of lessons learnt from them: s 20(3).

The regulations may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity: s 20(4). The regulations may also make provision for the prevention and control of health care associated infections and may include such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them: s 20(5). 'Health care associated infection' means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where (a) health or social care is being, or has been, provided to that or any other individual; and (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care: s 20(6). But 'health care associated infection' does not include an infection to which the individual is deliberately exposed as part of any health care: s 20(7). Before making any regulations under s 20, except regulations which amend other regulations under this provision and do not, in the opinion of the Secretary of State, effect any substantial change in the provision made by those regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate: s 20(7). Consultation undertaken by the Secretary of State before the commencement of this provision is as effective for these purposes as consultation undertaken after that time: s 20(8). The Care Quality Commission must issue guidance about compliance with the requirements of regulations under s 20, other than requirements which relate to the prevention or control of health care associated infections: see s 23. Where the Commission proposes to issue guidance under s 23, it must prepare a draft of the guidance, and consult such persons as the Commission considers appropriate about the draft: see s 24.

As to the protection of vulnerable adults, and in particular, the duty to keep a list of individuals who are barred from regulated activity with vulnerable adults, see the Safeguarding Vulnerable Groups Act 2006 ss 2, 3, Sch 3. For the meaning of 'regulated activity' see s 5, Sch 4; and for the meaning of 'vulnerable adult' see s 59 (amended by SI 2008/912, and the Health Act 2009 Sch 1 para 15). The adults barred list is to be maintained by a newly constituted Independent Barring Board (see s 1, Sch 1). For the meaning of 'vulnerable adult' see s 59 (amended by SI 2008/912, and the Health Act 2009 Sch 1 para 15). An individual commits an offence if he seeks to engage, offers to engage, or engages in regulated activity from which he is barred: see the Safeguarding Vulnerable Groups Act 2006 s 7. Any person who permits an individual to engage in regulated activity if he knows or has reason to believe that the individual is barred from that activity and the individual engages in that activity also commits an offence: see s 9. For further provision as to offences, see ss 18-20 (in force in part). Certain activities which involve the opportunity for contact with vulnerable adults may be controlled activities, to the extent that they are not regulated activities, and the Secretary of State may make regulations as to the persons who may engage in such activities: see ss 22, 23 (in force for certain purposes). See also the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009, SI 2009/1548. As to the duty to provide information to the Independent Barring Board where it is considering whether to include any person in a barred list or to remove any person from a barred list, see the Safeguarding Vulnerable Groups Act 2006 ss 37, 40, 42, and 46; and as to the duty to refer information to the Independent Barring Board where it is thought that a person on the barred list has engaged in relevant inappropriate conduct, or that the harm test is satisfied, see ss 35, 36, 38, 39, 41 and 45. No claim for damages may be made as a result of a person's inclusion in, or the fact that he is not included in a barred list: see s 57. For further provision as to barred lists, see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 681 et seq.

The Secretary of State may also issue a code of practice about compliance with the requirements relating to the prevention and control of health care associated infections: see the Health and Social Care Act 2008 s 21. As to the consultation process the Secretary of State must follow when preparing to issue or revise such a code of practice, see s 22. A code of practice under s 21 and guidance under s 23 (above) are to be taken into account (i) in the making of any decision by the Commission under Pt 1 Ch 2; (ii) in any proceedings for the making of an order under s 30 (see PARA 1001A.5); (iii) in any proceedings on an appeal against such a decision or order; (iv) in any proceedings for an offence under s 33 (see PARA 1001A.6) or under regulations under s 20: s 25(1). A code of practice under s 21 or guidance under s 23 are also admissible in evidence in other criminal or civil proceedings, but a failure to observe any provision of a code of practice under s 21 or guidance under s 23 does not of itself make a person liable to any criminal or civil proceedings: s 25(2), (3).

4. Registration procedure

Where a person applies for registration as a service provider in respect of a regulated activity (see PARA 1001A.1), the Care Quality Commission (see PARA 1011A) must give the applicant notice in writing of a proposal to refuse the application: s 26(1), (3). Except where it makes an application under s 30 (see PARA 1001A.5) or gives notice under s 31 (see PARA 1001A.5), the Commission must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal (1) to cancel the registration (otherwise than by virtue of s 17(2) (see PARA 1001A.2)) or in accordance with an application under s 19(1)(b)) (see PARA 1001A.2); (2) to suspend the registration or extend a period of suspension; (3) to vary or remove (otherwise than in accordance with an application under s 19(1)(a) (see PARA 1001A.2)) any condition for the time being in force in relation to the registration; or (4) to impose in relation to the registration any additional condition: s 26(4). The Commission must give the applicant notice in writing of a proposal to refuse an application under s 19(1)(a), (b) or (c): s 26(5). A notice under s 26 must give the Commission's reasons for its proposal: s

26(6). A notice of proposal under s 26 must state that the person has 28 days to make written representations to the Commission if they wish to dispute the Commission's proposal: see s 27. As to the bodies which the Commission must notify when it issues a notice under s 26, see s 39. As to service of documents see s 93, and as to electronic communications see s 94.

If the Commission decides to grant an application for registration as a service provider in respect of a regulated activity either unconditionally, or subject only to conditions each of which is either required by s 13(1) (see PARA 1001A.2) or agreed in writing between the Commission and the applicant, it must give the applicant notice in writing of the decision: s 28(1). A notice under s 28(1) must state the conditions subject to which registration is granted: s 28(2). If the Commission decides to adopt a proposal of which it was required to give notice under s 26, it must give notice in writing of its decision to any person to whom it was required by s 26 to give notice of the proposal: s 28(3). A notice under s 28(3) must (a) explain the right of appeal conferred by s 32; (b) in the case of a decision to adopt a proposal under s 26(4)(b) (see head (2)), state the period (or extended period) of suspension; and (c) in the case of a decision to adopt a proposal under s 26(4)(c) or (d) (see heads (3) and (4)), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed: s 28(4). As to the bodies which the Commission must notify when it issues a notice under s 28, see s 39.

5. Warning notices, cancellation and suspension of registration

If it appears to the Care Quality Commission (see PARA 1011A) that a person who is registered under the Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) as a service provider in respect of a regulated activity (see PARA 1001A.1) has failed to comply with the relevant requirements, the Commission may give the registered person a warning notice: s 29(1). A warning notice is a notice in writing (1) specifying the conduct which appears to the Commission to constitute a failure to comply with the relevant requirements; (2) specifying the requirement concerned; and (3) where it appears to the Commission that the failure is continuing (a) requiring the registered person to comply with the requirement concerned within a specified time; and (b) stating that, if the registered person fails to do so within that time, the Commission may take action to secure compliance with the relevant requirements: s 29(2). For these purposes 'relevant requirements' means any requirements or conditions imposed by or under Pt 1 Ch 2 or Pt 1 Ch 6 (ss 60-97), and the requirements of any other enactment which appears to the Commission to be relevant: s 29(7). The following provisions apply where a warning notice has been given to any person, and where any failure to comply with a requirement is specified under head (3), the requirement has been complied with within the specified time: s 29(3). The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition: s 29(4). No proceedings may be brought against any person registered in respect of the regulated activity for a Part 1 offence that arises out of the failure to which the notice relates, so far as occurring before the relevant time: s 29(5). In s 29(4) and (5) 'the relevant time' means, where a time is specified under head (3)(a), the time so specified, and in any other case, the date on which the notice was given: s 29(6). As to the bodies which the Commission must notify when it issues a notice under s 29, see s 39. As to service of documents see s 93, and as to electronic communications see s 94.

If the Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider in respect of a regulated activity, and it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being, the justice may make the order, and the cancellation has effect from the time when the order is made: s 30(1). An application under s 30(1) may, if the justice thinks fit, be made without notice having been given to the registered person: s 30(2). As soon as practicable after the making of such an application, the Commission must give notice of the application (A) to

such Primary Care Trust or English local authority as may be determined in accordance with regulations; (b) where the person registered as a service provider is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined; (c) where the person registered as a service provider is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts; and (d) to such other persons as the Commission considers appropriate: s 30(3). An order under s 30(1) must be in writing, and where such an order is made, the Commission must, as soon as practicable after the making of the order, serve on the person registered as a service provider in respect of the regulated activity a copy of the order, and notice of the right of appeal conferred by s 32 (see below): s 30(4), (5).

If the Commission has reasonable cause to believe that unless it acts under the following provision any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing to a person registered as a service provider in respect of a regulated activity, provide for any decision of the Commission that is mentioned in s 31(2) to take effect from the time when the notice is given: s 31(1). Those decisions are a decision under s 12(5) (see PARA 1001A.1) or s 15(5) (see PARA 1001A.2) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition, and a decision under s 18 (see PARA 1001A.2) to suspend the registration or extend a period of suspension: s 31(2). The notice must state that it is given under this provision, state the Commission's reasons for believing that the circumstances fall within s 31(1), specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and explain the right of appeal conferred by s 32 below: s 31(3). As to the bodies which the Commission must notify when it issues a notice under s 26, see s 39.

An appeal against any decision of the Commission under Pt 1 Ch 2, other than a decision to give a warning notice under s 29, or an order made by a justice of the peace under s 30, lies to the First-tier Tribunal: s 32(1) (amended by SI 2009/56). No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order: Health and Social Care Act 2008 s 32(2). On an appeal against a decision of the Commission, other than a decision to which a notice under s 31 relates, the First-tier Tribunal may confirm the decision or direct that it is not to have effect: s 32(3) (amended by SI 2009/56). On an appeal against an order made by a justice of the peace the First-tier Tribunal may confirm the order or direct that it is to cease to have effect: Health and Social Care Act 2008 s 32(4) (amended by SI 2009/56). On an appeal against a decision to which a notice under s 31 relates, the First-tier Tribunal may confirm the decision or direct that it is to cease to have effect: Health and Social Care Act 2008 s 32(5) (amended by SI 2009/56). On an appeal against a decision or order, the First-tier Tribunal also has power to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates, to direct that any such discretionary condition is to cease to have effect, to direct that any such discretionary condition as the First-tier Tribunal thinks fit is to have effect in respect of the regulated activity, or to vary the period of any suspension: Health and Social Care Act 2008 s 32(6) (amended by SI 2009/56). For these purposes 'discretionary condition', means any condition other than a registered manager condition required by the Health and Social Care Act s 13(1) (see PARA 1001A.2): s 32(7).

6. Offences

A person who is registered under the Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) in respect of a regulated activity (see PARA 1001A.1), and fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of Pt 1 Ch 2 in relation to the registration, is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000: s 33.

If a person ('S') who is registered as a service provider in respect of a regulated activity carries on that activity while S's registration is suspended, S is guilty of an offence and is liable on summary conviction to a fine not exceeding £50,000: s 34(1), (5).

Regulations under Pt 1 Ch 2 may provide that a contravention of or failure to comply with any specified provision of the regulations is to be an offence, but may not provide for an offence to be triable on indictment or to be punishable with imprisonment or with a fine exceeding (1) in the case of regulations under s 20 (regulation of regulated activities) (see PARA 1001A.3), £50,000; or (2) in any other case, level 4 on the standard scale: s 35.

Any person who, with intent to deceive any person (a) applies any name to any concern ('concern' includes any organisation) carried on in England or to any premises in England; or (b) in any way describes such a concern or such premises or holds such a concern or such premises out, so as to indicate, or reasonably be understood to indicate, that the carrying on of the concern is a regulated activity or that the premises are used for the carrying on of a regulated activity is guilty of an offence unless that person is registered under Pt 1 Ch 2 as a service provider in respect of the regulated activity in question, and that registration has not been suspended: s 36(1), (2), (5). Any person who, with intent to deceive any person, in any way describes or holds out any person registered as a service provider in respect of a regulated activity as able to provide a service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of Pt 1 Ch 2 in relation to the regulated activity is guilty of an offence: s 36(3). A person guilty of an offence under s 36 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 36(4).

The following provisions apply to any application under Pt 1 Ch 2 by a person ('A') (i) for registration; (ii) for the variation or removal of any condition in force in relation to A's registration; (iii) for the variation or cancellation of any suspension of A's registration; or (iv) for the cancellation of A's registration: s 37(1). If, in any such application, A knowingly makes a statement which is false or misleading in a material respect, A is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 37(2).

As to fixed penalty offences, see PARA 1001A.7.

7. Enforcement

Where the Care Quality Commission is satisfied that a person has committed a fixed penalty offence, the Commission may give the person a penalty notice in respect of the offence: Health and Social Care Act 2008 s 86(1). A fixed penalty offence is any offence under Pt 1 (ss 1-97) that is prescribed for these purposes: s 86(2). A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice: s 86(3). Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed and the person cannot be convicted of the offence to which the notice relates if the person pays a penalty in accordance with the notice: s 86(4), (5). Penalties under this provision are payable to the Commission: s 86(6). Penalties received by the Commission must be paid to the Secretary of State: s 86(7). Procedural details about penalty notices may be set out in regulations: see s 87.

The Commission must publish guidance on how it will exercise its enforcement powers under Pt 1 (s 88), and regulations may authorise or require the Commission to publish details of enforcement action it has taken (s 89).

Proceedings in respect of an offence under Pt 1 may not, without the written consent of the Attorney General, be taken by any person other than the Commission, or, in relation to any functions of the Commission which the Secretary of State is for the time being discharging by virtue of s 82 (see PARA 1011A.1), the Secretary of State: s 90(1). Proceedings for an offence under Pt 1 may be brought within a period of 12 months from the date on which evidence

sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge; but no such proceedings are to be brought by virtue of this provision more than 3 years after the commission of the offence: s 90(2).

As to offences by bodies corporate, see s 91, and as to the procedure where criminal proceedings are brought against unincorporated associations, see s 92.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(1) IN GENERAL/1001B. General functions of the National Assembly for Wales under the Care Standards Act 2000.

1001B. General functions of the National Assembly for Wales under the Care Standards Act 2000.

The National Assembly for Wales is the registration authority in relation to Wales for the purposes of the Care Standards Act 2000¹. The Assembly has the general duty of encouraging improvement in the quality of Part II services² provided in Wales³. It must make information about Part II services provided in Wales available to the public⁴. The Assembly has such additional functions in relation to Part II services provided in Wales as may be specified in regulations made by the Assembly⁵. The Assembly may provide training for the purpose of assisting persons to attain standards set out in any statements published by it in relation to national minimum standards⁶.

The Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of certain specified functions⁷, and any other functions exercisable by the Assembly corresponding to functions exercisable by the Care Quality Commission in relation to England or by Her Majesty's Chief Inspector of Education, Children's Services and Skills⁸.

1 Care Standards Act 2000 s 5(1)(b) (s 5 renumbered as s 5(1) by virtue of the Adoption and Children Act 2002 Sch 3 para 105). The 2000 Act s 5(1) is subject to s 36A (voluntary adoption agencies: distribution of functions): s 5(2) (added by 2002 Act Sch 3 para 105).

2 'Part II services' means services of the kind provided by persons registered under the 2000 Act Pt II (ss 11-42): s 8(7) (added by Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 18(3); renumbered by Education and Inspections Act 2006 Sch 14 para 40(4); and amended by Health and Social Care Act 2008 Sch 5 para 8(4)).

3 2000 Act s 8(1).

4 Ibid s 8(2).

5 Ibid s 8(3) (s 8(3) substituted by Education and Inspections Act 2006 Sch 14 para 40(2)). But the functions which may be so specified do not include functions of making, confirming or approving subordinate legislation (as defined by the Government of Wales Act 2006 s 158(1)): 2000 Act s 8(3A) (substituted by Health and Social Care Act 2008 Sch 5 para 8(2)). The Assembly may charge a reasonable fee determined by it in connection with the exercise of any power conferred on it by or under the 2000 Act: s 8(4).

6 Ibid s 8(5), referring to statements published by it under s 23 (see PARA 1042B).

7 Ie exercisable by virtue of ibid ss 5(1)(b) and 8(1)-(3): s 8(6)(a) (s 8(6) added by 2003 Act s 109; and amended by Education and Inspections Act 2006 Sch 14 para 40(3); and Health and Social Care Act 2008 Sch 5 para 8(3)).

8 2000 Act s 8(6). As to the Care Quality Commission, see PARA 1011A.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care

services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(2) TRAINING AND RESEARCH/1002. Constitution of the Central Council for Education and Training in Social Work.

(2) TRAINING AND RESEARCH

1002. Constitution of the Central Council for Education and Training in Social Work.

The Central Council for Education and Training in Social Work¹ is a corporate body with the functions assigned to it by statute². The Council consists of a chairman and not more than 25 other members³. The members of the Council are appointed by the Secretary of State⁴, but before appointing a member other than the chairman the Secretary of State must consult any body that appears to him to be appropriate⁵. The chairman is appointed for a term not exceeding five years but is eligible for reappointment as chairman⁶; each of the other members is appointed for a term not exceeding three years⁷. A person who is or has been a member of the Council is eligible for reappointment as a member⁸. A member of the Council may at any time resign his office⁹; and the Secretary of State may remove a member from office in certain circumstances¹⁰.

The Council may appoint one or more committees¹¹, either to advise the Council or to perform any of the functions of the Council or for both purposes¹². If the Secretary of State directs the Council to appoint committees to advise the Council on the exercise of the Council's functions as far as they relate to Scotland, Wales or Northern Ireland, it is the Council's duty to appoint a committee or committees in accordance with the direction¹³; and the Council may determine that any committee so appointed is also to perform the functions of the Council so far as they relate to Scotland, Wales or Northern Ireland¹⁴. Where a committee performs any of the Council's functions, the Council may direct that the committee must cease to perform them¹⁵. A person must not be appointed chairman of a committee unless he is a member of the Council¹⁶. If the Secretary of State so directs, it is the duty of the Council to notify¹⁷ to him the name of the person whom it proposes to appoint as chairman of any committee appointed to advise the Council on the exercise of its functions so far as they relate to Scotland, Wales or Northern Ireland, whether the committee was established in pursuance of a direction or not¹⁸. A person whose proposed appointment has been notified to the Secretary of State must not be appointed¹⁹ if the Secretary of State directs the Council not to appoint him²⁰.

The proceedings of the Council or any committee are not invalidated by any vacancy in the membership of the Council or committee, or by any defect in the appointment of any member²¹. The Council, and, subject to any directions of the Council, any committee appointed by it, may each regulate its own procedure and fix a quorum for its own proceedings²².

The Council may appoint such numbers of staff, of such descriptions and upon such terms as to remuneration and other conditions of service as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine²³. The Council has power, with the approval of the Secretary of State given with the consent of the Treasury, (1) to pay pensions, allowances and gratuities to or in respect of the Council's staff; (2) to make payments towards the provision of such pensions, allowances or gratuities; (3) to provide or maintain schemes, whether contributory or not, for the payment of such pensions, allowances or gratuities; and (4) to pay compensation to any member of its staff for loss of office²⁴.

The Council may pay to its members, and to the members of any committee appointed by it, such travelling, subsistence and other allowances as the Council may, with the approval of the Secretary of State given with the consent of the Treasury, determine²⁵.

The Council must keep proper accounts and other records in relation to the accounts and prepare in respect of each financial year and transmit to the Secretary of State a statement of account²⁶. The Secretary of State must transmit the statement on or before 30 November following the financial year to the Comptroller and Auditor General, who must examine and certify it and lay copies of it together with his report on it before each House of Parliament²⁷.

1 The Central Council for Education and Training in Social Work, which was originally constituted under the name 'Council for Training in Social Work' by the Health Visiting and Social Work (Training) Act 1962 (repealed) and was renamed by the Local Authority Social Services Act 1970 s 11(1) (repealed), continues in being under the Health and Social Services and Social Security Adjudications Act 1983: see s 10(1). The persons who were the chairman and members of the Council on 1 April 1984 (ie the commencement of s 10) ceased to hold office on that date, but were eligible for reappointment to the Council: see s 10(2), Sch 3 para 7.

The Central Council for Education and Training in Social Work is currently under review: see 581 HL Official Report (5th series), 23 July 1997, written answers cols 165-166; 298 HC Official Report (6th series) written answers col 730.

2 Ie the functions which are or may be assigned to it by or under the Health and Social Services and Social Security Adjudications Act 1983 Pt III (s 10): s 10(1).

3 Ibid Sch 3 para 1. As to the power to increase the maximum number of members of the Council see PARA 1003 note 2 post.

4 Ibid Sch 3 para 2. As to the Secretary of State see PARA 1001 note 6 ante.

Any expenses incurred by the Secretary of State for the purposes of the Central Council for Education and Training in Social Work must be defrayed out of money provided by Parliament, as must any increase attributable to the provisions of the Health and Social Services and Social Security Adjudications Act 1983 in the sums payable out of such money under any other Act: s 28(1). Any sums repaid to the Secretary of State in pursuance of the Health and Social Services and Social Security Adjudications Act 1983 must be paid by him into the Consolidated Fund: s 28(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711.

5 Ibid Sch 3 para 3.

6 Ibid Sch 3 para 4.

7 Ibid Sch 3 para 5. However, a member appointed to fill a casual vacancy is appointed for the remainder of the term for which his predecessor was appointed: Sch 3 para 5.

8 Ibid Sch 3 para 6.

9 Ibid Sch 3 para 8.

10 Ie if that member (1) has become bankrupt or made an arrangement with his creditors; (2) is incapacitated by physical or mental illness; (3) has been absent from meetings of the Council for a period of six months otherwise than for a reason approved by the Secretary of State; (4) is, in the opinion of the Secretary of State, otherwise unable or unfit to discharge the functions of a member: ibid Sch 3 para 9.

11 Ibid Sch 3 para 10.

12 Ibid Sch 3 para 11.

13 Ibid Sch 3 para 12.

14 See ibid Sch 3 para 13.

15 Ibid Sch 3 para 14.

16 See ibid Sch 3 para 15.

17 A notification must be sent to the Secretary of State at least 14 days before the proposed appointment is due to take effect: ibid Sch 3 para 17.

18 Ibid Sch 3 para 16.

19 le as chairman of the committee to the chairmanship of which the Council propose to appoint him: see ibid Sch 3 para 18.

20 Ibid Sch 3 para 18.

21 Ibid Sch 3 para 19.

22 Ibid Sch 3 para 20.

23 Ibid Sch 3 para 21. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

24 Ibid Sch 3 para 22. Compensation under head (4) in the text may be in excess of the amount required by the Employment Rights Act 1996: Health and Social Services and Social Security Adjudications Act 1983 Sch 3 para 23 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 21).

25 Health and Social Services and Social Security Adjudications Act 1983 Sch 3 para 24.

The Secretary of State must pay to the Council out of money provided by Parliament such sums as may be necessary to defray the Council's approved expenditure so far as that expenditure exceeds any income derived from the exercise of the Council's functions and is not met out of moneys appropriated by Measure of the Northern Ireland Assembly: see Sch 3 para 27. For these purposes, 'approved expenditure' means expenditure incurred with the approval of the Secretary of State and the Head of the Department of Health and Social Services for Northern Ireland: Sch 3 para 28. Functions belonging to a Head of a Northern Ireland department may be discharged by that department subject to the discretion and control of the Secretary of State: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 71, 74. As to the dissolution of the Northern Ireland Assembly see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 67-100.

26 Ibid Sch 3 para 25. The statement of account must be in such form as the Secretary of State may, with the approval of the Treasury, determine: Sch 3 para 25.

27 Ibid Sch 3 para 26. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. As to laying documents before Parliament see PARLIAMENT vol 34 (Reissue) PARA 941.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(2) TRAINING AND RESEARCH/1003. Functions of the Central Council for Education and Training in Social Work.

1003. Functions of the Central Council for Education and Training in Social Work.

The Central Council for Education and Training in Social Work¹ must promote training in relevant social work² by (1) seeking to secure suitable facilities for training persons in such work; (2) approving³ courses as suitable to be attended by persons engaged, or intending to engage, in such work; and (3) seeking to attract persons to such courses⁴. If it appears to the Council that adequate provision is not being made for further training in relevant social work, the Council must provide or secure the provision of courses for this purpose⁵. The Council may conduct, or make arrangement for the conduct of, examinations in connection with courses⁶; and may carry out research into matters relevant to training for relevant social work, or assist other persons in carrying out such research⁷.

The Council may, upon such terms and subject to such conditions as it considers appropriate, make grants and pay travelling and other allowances to persons resident in Great Britain, in order to secure their training in relevant social work⁸. However, the Council must not make grants or pay allowances except for such purposes as the Secretary of State may direct⁹; and the Secretary of State may by directions specify terms upon which and conditions subject to which the Council is to make grants and pay allowances¹⁰.

1 As to the constitution of the Central Council for Education and Training in Social Work see PARA 1002 ante.

2 'Relevant social work' means such social work as is required in connection with (1) health, education or social services provided by local authorities, the Department of Health and Social Services for Northern Ireland or education and library boards in Northern Ireland or provided in the United Kingdom by voluntary organisations; and (2) the probation service: Health and Social Services and Social Security Adjudications Act 1983 s 10(16). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 Pt I para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

The Secretary of State may by regulations made by statutory instrument make provision (a) for conferring on the Council such functions in relation to social work as are conferred on it by the Health and Social Services and Social Security Adjudications Act 1983 s 10 in relation to relevant social work; and (b) in that connection, for making any such increase in the maximum number of members of the Council as he may deem expedient: see s 10(11), (12). Regulations are subject to annulment in pursuance of a resolution of either House of Parliament: s 10(13). The power to make regulations includes power to make different provision in relation to England, Scotland, Wales and Northern Ireland: s 10(15). The functions of the Council have now been extended to social work other than relevant social work: see the Central Council for Education and Training in Social Work (Functions) Regulations 1991, SI 1991/1123. As to the maximum number of members of the Council see PARA 1002 ante. As to the Secretary of State see PARA 1001 note 6 ante.

3 Approval must be given by the Council in accordance with rules made by the Council and approved by the Privy Council: Health and Social Services and Social Security Adjudications Act 1983 s 10(4). The rules (1) may specify subjects to be comprised in the courses to be approved; and (2) must specify the conditions for admission to the courses and for the award by the Council of certificates of their successful completion: s 10(4) (a), (b).

4 Ibid s 10(3).

5 Ibid s 10(5).

6 Ie such courses as are mentioned in ibid s 10: see s 10(6)(a).

7 See ibid s 10(6)(b).

8 Ibid s 10(7).

9 Ibid s 10(8). Without prejudice to the generality of s 10(8), (9) (see the text and note 10 infra), directions under those provisions may specify:

- 1 (1) the courses for which and the categories of students to whom grants may be made and allowances may be paid under s 10(7) (s 10(10)(a));
- 2 (2) maximum amounts to be spent on such grants and allowances (s 10(10)(b));
- 3 (3) maximum amounts to be spent on such grants and allowances to any individual (s 10(10)(c)); and
- 4 (4) the procedures for accounting for expenditure on such grants and allowances (s 10(10)(d)).

The powers to give directions conferred by s 10(8), (9) include power to make different provision in relation to England, Scotland and Wales: s 10(14).

10 Ibid s 10(9). See also note 9 supra.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1003 Functions of the Central Council for Education and Training in Social Work

TEXT AND NOTES--The Council has ceased to exercise the functions conferred on it by or under the Health and Social Services and Social Security Adjudications Act 1993 s 10: Care Standards Act 2000 s 70(1).

Her Majesty may by Order in Council make a scheme under s 70(3), or make any provision under s 70(4), which she considers necessary or expedient in consequence of the functions of the Council ceasing, by virtue of s 70(1), an Act of the Scottish Parliament or an Act of the Northern Ireland Assembly, to be exercisable in relation to any part of the United Kingdom: s 70(2).

A scheme may provide (1) for the transfer to the new employer of any eligible employee; (2) for the transfer to any person of any property belonging to the Council; (3) for any person to have such rights and interests in relation to any such property as Her Majesty considers appropriate, whether in connection with a transfer or otherwise; (4) for the transfer to any person of any liabilities of the Council: s 70(2). 'New employer' means, in relation to England and Wales, either the General Social Care Council or the Care Council for Wales: s 70(5). 'Eligible employee' means a person who is employed under a contract of employment with the old employer; and 'old employer' means the Central Council for Education and Training in Social Work: s 70(5). 'Property' includes rights and interests of any description: s 70(5).

The Order in Council may make any supplementary, incidental or consequential provision, any transitory, transitory, transitional or saving provision, including provision amending the Health and Social Services and Social Security Adjudications Act 1993

Sch 3, or repealing Sch 3, s 10 and any reference in any enactment to the Central Council for Education and Training in Social Work: 2000 Act s 70(4). See the Central Council for Education and Training in Social Work (Transfer Scheme) Order 2001, SI 2001/2561.

As to transfers of staff under the 2000 Act Pt II (ss 11-42), schemes for the transfer of staff and the effect of schemes, see ss 38, 114, 115.

The General Social Care Council ('the English Council'), established by s 54(1)(a), and the Care Council for Wales or Cyngor Gofal Cymru ('the Welsh Council'), established by s 54(1)(b), have the functions conferred on them by or under the 2000 Act or any other enactment: s 54(1). As to the appointment of members and procedure see s 54(6), Sch 1; the General Social Care Council (Appointments and Procedure) Regulations 2001, SI 2001/1744 (amended by SI 2003/1590, SI 2004/1771, SI 2006/1722, SI 2007/3101); and the Care Council for Wales (Appointment, Membership and Procedure) Regulations 2001, SI 2001/2136.

It is the duty of the English Council to promote in relation to England high standards of conduct and practice among social care workers, and high standards in their training: 2000 Act s 54(2). The Welsh Council has the same duty in relation to Wales: s 54(3). Each Council, in the exercise of its functions, must act in accordance with any directions, which must be in writing, given to it by the appropriate minister (see PARA 1042B), and under his general guidance: s 54(4), (5).

'Social care worker' means a person (other than a person excepted by regulations) who (a) engages in relevant social work, (b) is employed at a children's home, care home or residential family centre or for the purposes of a domiciliary care agency, a fostering agency, a voluntary adoption agency or an adoption support agency, (c) manages a home, centre or agency, of a description mentioned in head (b), (d) is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance: s 55(2) (amended by the Adoption and Children Act 2002 Sch 3 para 115; and the Health and Social Care Act 2008 Sch 5 para 29(2)). Regulations may provide that certain other classes of persons are to be treated as social care workers: see 2000 Act s 55(3) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 28; the Education and Inspections Act 2006 Sch 14 para 52; and the Health and Social Care Act 2008 Sch 5 para 29(3), Sch 15 Pt 1). Persons participating in a course approved by the General Social Care Council under the 2000 Act s 63 have been specified as such a class in relation to England: General Social Care Council (Description of Persons to be Treated as Social Care Workers) Regulations 2004, SI 2004/561. For the purposes only of the function of the Care Council for Wales under the 2000 Act s 54(3), persons of any of the descriptions in s 55(3) are to be treated as social care workers: Care Standards Act 2000 (Extension of Meaning of 'Social Care Worker') (Wales) Regulations 2002, SI 2002/1176. For the purpose of registration of student social workers in the register maintained by the Care Council for Wales under the 2000 Act s 56(1), student social workers are to be treated as social care workers: Care Standards Act 2000 (Extension of Meaning of 'Social Care Worker') (Wales) Regulations 2004, SI 2004/711. 'Student social worker' means a person participating in a course approved by the Care Council for Wales under the 2000 Act s 63: SI 2004/711.

See the Domiciliary Care Agencies Regulations 2002, SI 2002/3214 (amended by SI 2003/2323, SI 2004/664, SI 2004/1770, SI 2004/2071, SI 2006/1493, SI 2007/1898, SI 2009/1895), which apply to England; and the Domiciliary Care Agencies (Wales) Regulations 2004, SI 2004/219 (amended by SI 2004/1756, SI 2004/2414, SI 2005/3302, SI 2009/2541).

Each Council must maintain a register of (i) social workers; (ii) social care workers of any other description specified by the appropriate minister by order; and (iii) visiting social workers from other EEA states and Switzerland: 2000 Act s 56(1) (amended by SI 2007/3101). Student social workers have been specified as social care workers for the purposes of the 2000 Act s 56 in relation to England (General Social Care Council (Registration) (Description of Social Care Workers) Order 2004, SI 2004/562) and Wales (Care Council for Wales (Specification of Student Social Workers) (Registration) Order 2004, SI 2004/709; Care Council for Wales (Specification of Social Care Workers) (Registration) Order 2004, SI 2004/2880). 'Student social worker' means a person participating in a course approved by the General Social Care Council or the Care Council for Wales under the 2000 Act s 63: SI 2004/562 reg 1(2); SI 2004/709 reg 1(2). There must be a separate part of the register for social workers (the 'principal part'), for each description of social care workers specified pursuant to head (ii) above (the 'added part'), and for visiting social workers from other EEA states and Switzerland (the 'visiting European part'): 2000 Act s 56(2), (2A) (s 56(2) amended, s 56(2A) by SI 2007/3101). The appropriate minister may by order provide for a specified part of the register to be closed, as from a date specified by the order, so that on or after that date no further persons can become registered in that part: 2000 Act s 56(3). The appropriate minister must consult the Council before making, varying or revoking any order under s 56: s 56(4). See also *Savills v General Social Care Council; R (on the application of Savills) v General Social Care Council* [2007] All ER (D) 92 (Oct) (application for registration as social worker because applicant did not have specified qualification).

Each Council must by rules determine circumstances in which, and the means by which, a person can be removed or suspended from any part of the register maintained under the 2000 Act s 56. Any power of the Council to make rules under Pt IV (ss 54-71) may be made, subject to the consent of the appropriate minister, in relation to all cases to which the power extends or in relation to any specified cases or classes of cases: s 71(1), (4). As to the charging of fees in connection with the Council's functions see s 71(2), (3) (amended by SI 2007/3101).

An application for registration in the principal part, or an added part, of the register must be made to the Council in accordance with rules made by it and must specify each part of the register in which registration is sought and such other matters as may be required by the rules: 2000 Act s 57 (amended by SI 2007/3101).

In the case of an application under the 2000 Act s 57(1), if the Council is satisfied that the applicant is of good character; is physically and mentally fit to perform the whole or part of the work of persons registered in any part of the register to which his application relates, and satisfies specified conditions, it must grant the application, either unconditionally or subject to such conditions as it thinks fit; and in any other case it must refuse it: s 58(1) (amended by SI 2007/3101). The first condition is that (A) in the case of an applicant for registration as a social worker, he has successfully completed a course approved by the Council under the 2000 Act s 63 for persons wishing to become social workers; he satisfies the requirements of s 64; or he satisfies any requirements as to training which the Council may by rules impose in relation to social workers; and (B) in the case of an applicant for registration as a social care worker of any other description, he satisfies any requirements as to training which the Council may by rules impose in relation to social care workers of that description: s 58(2). The second condition is that the applicant satisfies any requirements as to conduct and competence which the Council may by rules impose: s 58(3). A person who is lawfully established as a social worker in another EEA state or Switzerland is entitled to be registered in the visiting European part of the register: see s 58A (added by SI 2007/3101). A Council may by rules make provision about registration: 2000 Act ss 59, 60 (s 60 amended by SI 2007/3101).

An appeal against a decision of a Council under Pt IV in respect of registration lies to the Tribunal: 2000 Act s 68 (amended by SI 2007/3101).

A Council must publish the register maintained by it in such manner, and at such times, as it considers appropriate: 2000 Act s 69.

Each Council must prepare and from time to time publish codes of practice laying down standards of conduct and practice expected of social care workers, and standards of conduct and practice in relation to them, being standards expected of persons employing or seeking to employ them: s 62 (amended by Mental Health Act 2007 s 20). Each Council may, in accordance with rules made by it, approve courses in relevant social work for persons who are or wish to become social workers: 2000 Act s 63. As to applications for registration from persons who have qualifications gained outside a Council's area, see s 64 (amended by SI 2004/1947, SI 2007/3101). A Council may make rules, which may be varied, requiring registered persons to undertake further training: 2000 Act s 65 (amended by SI 2007/3101). A Council may by rules provide for visiting places or institutions where social work courses are carried on: 2000 Act s 66 (amended by SI 2007/3101).

If a person who is not registered as a social worker in any relevant register, and is not registered as a visiting social worker from another EEA state or Switzerland in any relevant register, with intent to deceive another takes or uses the title of social worker; takes or uses any title or description implying that he is registered in either of those ways, or in any way holds himself out as so registered, he is guilty of an offence: 2000 Act s 61(1) (amended by SI 2007/3101). For these purposes, a register is a relevant register if it is maintained by a Council; or a prescribed register maintained under a provision of the law of Scotland or Northern Ireland which appears to the appropriate minister to correspond to the provisions of Pt IV: 2000 Act s 61(2). A person guilty of an offence under s 61 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 61(3). As to the standard scale see PARA 1014 NOTE 11.

The appropriate minister has the function of ascertaining what training is required by persons who are or wish to become social care workers; ascertaining what financial and other assistance is required for promoting such training; encouraging the provision of such assistance; drawing up occupational standards for social care workers: s 67. See further s 67A (added by Health Act 2006 s 72; and amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 287) (exercise by special health authority of social care training functions).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/1. INTRODUCTION/(2) TRAINING AND RESEARCH/1004. Research.

1004. Research.

The Secretary of State¹ may promote research into any matter relating to the functions of local authorities², and, in particular, may participate with or assist other persons in conducting such research³. A local authority may conduct or assist other persons in conducting research into any matter relating to such functions⁴.

Similarly, a local social services authority⁵ may conduct or assist other persons in conducting research into matters relating to the functions of local social services authorities⁶.

The Secretary of State must as respects each year lay before Parliament a report on the progress made during that year in research and development work carried out by or on behalf of any Minister of the Crown in relation to equipment that might increase the range of activities and independence or well-being of disabled⁷ persons, and in particular such equipment that might improve their indoor and outdoor mobility⁸.

The Secretary of State must also collate and present evidence to the Medical Research Council⁹ on the need for an institute for hearing research, with the general function of co-ordinating and promoting research on hearing and assistance to the deaf and hard of hearing¹⁰.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 I.e. under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post): see s 30A (as added: see note 3 infra). As to the meaning of 'functions' see PARA 1001 note 11 ante. As to the meaning of 'local authority' see PARA 1005 post.

3 Ibid s 30A(a) (s 30A added by the Health and Social Services and Social Security Adjudications Act 1983 s 29, Sch 9 Pt I para 3). This power is without prejudice to any powers conferred on him by any other Act: National Assistance Act 1948 s 30A (as so added).

4 Ibid s 30A(b) (as added: see note 3 supra). This power is without prejudice to any powers conferred on local authorities by any other Act: s 30A (as so added).

5 For the meaning of 'local social services authority' see PARA 1005 post.

6 I.e. under the National Health Service Act 1977 s 21, Sch 8 (both as amended) (see PARAS 1025-1027 post): Sch 8 para 4 (added by the Health and Social Services and Social Security Adjudications Act 1983 Sch 9 Pt I para 23). This power is without prejudice to any powers conferred on them by any other Act: National Health Service Act 1977 Sch 8 para 4 (as so added).

7 As to the meaning of 'disabled' see PARA 1063 post.

8 Chronically Sick and Disabled Persons Act 1970 s 22.

9 As to the Medical Research Council see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 8.

10 Chronically Sick and Disabled Persons Act 1970 s 24.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in

England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1005. Meaning of local authority.

2. LOCAL AND CENTRAL AUTHORITIES

1005. Meaning of local authority.

Local authorities (which are referred to in the National Health Service Act 1977 and the Mental Health Act 1983 as 'local social services authorities') are, in relation to England, the councils of non-metropolitan counties, metropolitan districts and London boroughs and the Common Council of the City of London; in relation to Wales, the councils of counties and county boroughs; and, in relation to the Isles of Scilly, the Council of the Isles of Scilly¹.

¹ As to local authorities generally see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq. The definitions of 'local authority' for the purposes of each of the Acts referred to in this title are:

- 5 (1) for the purposes of the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq, 1029 et seq post), 'local authority' means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 in England or Wales (see head (11) infra): National Assistance Act 1948 s 33 (amended by the Local Authority Social Services Act 1970 ss 2(7), 14(2), Sch 3; the Local Government Act 1972 s 195(6), Sch 23 para 2(6); and the Residential Homes Act 1980 s 11(5), Sch 2). The provisions of the National Assistance Act 1948 extend to the Isles of Scilly (see s 66; and the Isles of Scilly (National Assistance) Order 1980, SI 1980/326); but do not, save as expressly provided, extend to Northern Ireland (National Assistance Act 1948 s 67);
- 6 (2) for the purposes of the Health Services and Public Health Act 1968 s 45 (as amended) (see PARA 1024 post), 'local authority' means the council of a county, other than a metropolitan county, or of a county borough, metropolitan district or London borough or the Common Council of the City of London: s 45(11) (amended by the Local Government Act 1972 Sch 23 para 15(3); and the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 5(1)). The provisions of the Health Services and Public Health Act 1968 extend to the Isles of Scilly (see s 46; the National Assistance Act 1948 s 66; and the Isles of Scilly (National Assistance) Order 1980, SI 1980/326); but do not, save as expressly provided, extend to Northern Ireland (see the Health Services and Public Health Act 1968 s 79);
- 7 (3) for the meaning of 'local authority' in the Chronically Sick and Disabled Persons Act 1970 (see PARAS 1017, 1023, 1063 et seq post) see the definition of 'local authority' for the purposes of the National Assistance Act 1948 in head (1) supra. The Chronically Sick and Disabled Persons Act 1970 refers to local authorities having functions under the National Assistance Act 1948, and thus also extends to the Isles of Scilly (see head (1) supra); but the Chronically Sick and Disabled Persons Act 1970 does not, save as expressly provided, extend to Northern Ireland (see s 29). For the purposes of s 21 (as amended) (see PARA 1071 post), 'local authorities' are: the Common Council of the City of London, the council of a county or metropolitan district in England or of a London borough, and the council of a Welsh county or county borough (s 21(8) (amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 s 8, Sch 5 Pt I para 1; and the Local Government (Wales) Act 1994 s 66(8), Sch 10 para 8, Sch 18));
- 8 (4) for the purposes of the National Health Service Act 1977 s 21, Sch 8 (both as amended) (see PARAS 1025-1027 post), 'local social services authority' means the council of a non-metropolitan county, of a county borough or of a metropolitan district or London borough, or the Common Council of the City of London: s 128(1) (amended by the Local Government (Wales) Act 1994 Sch 10 para 11(3)). As to the application of the National Health Service Act 1977 to the Isles of Scilly see s 130(4); and the Isles of Scilly (National Health Service) Order 1981, SI 1981/1473. The welfare provisions of the National Health Service Act 1977 do not apply to Northern Ireland (see s 130(3) (as amended));
- 9 (5) for the meaning of 'local authority' for the purposes of the Health and Social Services and Social Security Adjudications Act 1983 see the definitions of 'local authority' for the purposes of the National Assistance Act 1948, the Health Services and Public Health Act 1968 and the National Health Service Act 1977 in heads (1), (2), (4) supra. As to the application of the Health

and Social Services and Social Security Adjudications Act 1983 to the Isles of Scilly and Northern Ireland see s 33;

- 10 (6) for the purposes of the Mental Health Act 1983 s 117 (as amended) (see PARA 1028 post), 'local social services authority' means a council which is a local authority for the purpose of the Local Authority Social Services Act 1970 (see head (11) infra): Mental Health Act 1983 s 145(1). As to the application of the Mental Health Act 1983 to Northern Ireland and the Isles of Scilly see ss 147, 149; and the Isles of Scilly (Mental Health) Order 1985, SI 1985/149;
- 11 (7) for the purposes of the Disabled Persons (Services, Consultation and Representation) Act 1986 (see PARAS 1015-1017, 1023, 1064, 1072-1073 post), 'local authority', in relation to England and Wales, means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 or, so long as an order under s 12 is in force, the Council of the Isles of Scilly (see head (11) infra): Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1). The Disabled Persons (Services, Consultation and Representation) Act 1986 does not extend to Northern Ireland (see s 18);
- 12 (8) for the purposes of the National Health Service and Community Care Act 1990 (see PARA 1012 et seq post), 'local authority' means the council of a county, a county borough, a metropolitan district or a London borough or the Common Council of the City of London: s 46(3) (amended by the Local Government (Wales) Act 1994 Sch 10 para 14). As to the application of the National Health Service and Community Care Act 1990 to Northern Ireland and the Isles of Scilly see s 67 (as amended); and the Isles of Scilly (Community Care) Order 1993, SI 1993/570;
- 13 (9) for the purposes of the Carers (Recognition and Services) Act 1995 (see PARA 1016 post), 'local authority' has the meaning given by the National Health Service and Community Care Act 1990 s 46(3) (as amended) (see head (8) supra): Carers (Recognition and Services) Act 1995 s 1(6). The Carers (Recognition and Services) Act 1995 does not apply to Northern Ireland (s 5(5)); but has been extended to the Isles of Scilly (see s 3; and the Isles of Scilly (Carers) Order 1996, SI 1996/693);
- 14 (10) for the meaning of 'local authority' for the purposes of the Community Care (Direct Payments) Act 1996 (see PARA 1018 post) see the definition of 'local authority' for the purposes of the National Health Service and Community Care Act 1990 in head (8) supra. The Community Care (Direct Payments) Act 1996 does not, save as expressly provided, extend to Northern Ireland; but may be extended by order made by statutory instrument to the Isles of Scilly: see s 7. At the date at which this volume states the law, no such order had been made;
- 15 (11) the local authorities for the purposes of the Local Authority Social Services Act 1970 (see PARAS 1006-1007, 1011 post) are the councils of non-metropolitan counties, metropolitan districts and London boroughs and the Common Council of the City of London; but, in relation to Wales, are the councils of counties and county boroughs: s 1 (amended by the Local Government Act 1972 s 195(1); and the Local Government (Wales) Act 1994 Sch 10 para 7). The Local Authority Social Services Act 1970 has effect as if the Council of the Isles of Scilly were a local authority: see s 12; and the Isles of Scilly (Local Authority Social Services) Order 1980, SI 1980/328. The Local Authority Social Services Act 1970 does not extend to Northern Ireland: see s 15 (as amended).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1005 Meaning of local authority

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

NOTE 1--Head (1) 1970 Act s 2(7) repealed; head (5) 1983 Act s 33 amended: Statute Law (Repeals) Act 2004. Head (4) Local Government (Wales) Act 1994 Sch 10 para 11 repealed: National Health Service (Consequential Provisions) Act 2006 Sch 4. Head (7) Disabled Persons (Services, Consultation and Representation) Act 1986 s 18 amended: Disability Discrimination Act 2005 Sch 1 para 49. Head (10) Community Care (Direct Payments) Act 1996 s 7 amended: Health and Social Care Act 2001 Sch 6 Pt 3 (in force in relation to England: SI 2003/850). Head (11) for the purposes of the Carers (Equal Opportunities) Act 2004 (see PARA 1016), 'local authority' has the meaning given by the National Health Service and Community Care Act 1990 s 46(3) (see head (8)); Carers (Recognition and Services) Act 1995 s 1(6). The Carers (Recognition and Services) Act 1995 does not apply to Northern Ireland (s 5(5)); but has been extended to the Isles of Scilly (see s 3; Isles of Scilly (Carers) Order 1996, SI 1996/693).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1006. Social services committees.

1006. Social services committees.

For the purposes of its functions under the Local Authority Social Services Act 1970, every local authority¹ must establish a social services committee². However, instead of establishing social services committees for themselves, two or more local authorities may concur in establishing a joint social services committee³. The members of a local authority's social services committee may include persons who are not members of the authority or of any authority concurring in the establishment of the committee, provided that they are not disqualified⁴. If authorised by the local authority or, as the case may be, the concurring local authorities, and subject to any restrictions imposed by that authority or those authorities, a social services committee may co-opt persons to serve as members of the committee, provided that they are not disqualified⁵. However, at least a majority of the members of the committee must be members of the authority or the concurring authorities⁶.

All matters relating to the discharge by a local authority of specified functions under certain specified enactments⁷, and such other of its functions as the Secretary of State⁸ may designate⁹, stand referred to the social services committee¹⁰. A local authority may delegate to its social services committee any of its social services functions¹¹ and, unless the matter is urgent, must consider a report of the committee with respect to the matter in question before exercising any of those functions itself¹². A local authority may refer to its social services committee any matter which in its view may appropriately be referred to that committee but which would not otherwise stand referred to it by virtue of these provisions, and may delegate to the committee any of its functions relating to a matter so referred¹³.

A social services committee may establish sub-committees and delegate to them any of the functions of the committee¹⁴, and the social services committees of two or more local authorities may concur in the establishment of joint sub-committees and delegate to them any of the functions of either or any of the committees¹⁵. As from a day to be appointed¹⁶, a local authority may establish sub-committees of its social services committee and may delegate to any such sub-committee any of the functions of the committee¹⁷.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Local Authority Social Services Act 1970 s 2(1).

3 Ibid s 4(1). References to a local authority's social services committee, in relation to an authority which has so concurred with another or others, must be construed as references to the joint committee, except where the context otherwise requires: s 4(1).

4 I.e. disqualified under the Local Government Act 1972 s 80 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 119) or under the Transport Act 1985 s 74 (see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1268): Local Authority Social Services Act 1970 s 5(1), (6) (amended by the Local Government Act 1972 s 251(2), Sch 29 para 44(4); and the Transport Act 1985 s 139(2), Sch 7 para 14).

5 Local Authority Social Services Act 1970 s 5(2). As to disqualification see note 4 supra.

6 Ibid s 5(3).

7 See ibid s 2(1)(a). The specified enactments, and the specified functions under them, are listed in s 2(1)(a), Sch 1 (as amended), and are as follows:

16 (1) the Children and Young Persons Act 1933 Pt III (ss 31-76) (as amended) and Pt IV (ss 77-91) (largely repealed) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1232 et seq) (young offenders, care proceedings, etc);

- 17 (2) the National Assistance Act 1948 ss 21-27 (ss 21, 22, 24, 26 as amended; s 26A as added; ss 25, 27 repealed) (residential accommodation: see PARA 1029 et seq post); ss 29-30 (both as amended) (welfare services: see PARA 1020 et seq post); ss 43-45 (ss 43, 45 as amended; s 44 repealed) (recovery of costs: see PARA 1039 post); s 48 (as amended) (temporary protection of property: see PARA 1079 post); s 49 (as amended) (expenses of appointing receiver: see PARA 1079 post); and s 56(3) (as substituted) (prosecution of offences, except relating to offences under s 47(11) (as amended): see PARA 1077 post);
- 18 (3) the Disabled Persons (Employment) Act 1958 s 3 (as amended) (see EMPLOYMENT vol 39 (2009) PARA 539 (facilities for work for the disabled);
- 19 (4) the Mental Health Act 1959 s 8 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 405) (welfare and accommodation of mentally disordered persons);
- 20 (5) the Registered Homes Act 1984 (in so far as its provisions relate to mental nursing homes) (repealed) (welfare and accommodation of mentally disordered persons);
- 21 (6) the Mental Health (Scotland) Act 1984 s 10 (as prospectively amended) (welfare of certain persons while in hospital in Scotland);
- 22 (7) the Children and Young Persons Act 1963 Pt I (ss 1-33) (as amended) (see CHILDREN AND YOUNG PERSONS) (young persons in need of care, protection or control);
- 23 (8) the Health Services and Public Health Act 1968 s 45 (as amended) (welfare of old people: see PARA 1024 post); s 65 (as amended) (assistance to voluntary organisations: see PARA 1010 post);
- 24 (9) the Social Work (Scotland) Act 1968 ss 75(2), 76(4) (both as amended) (welfare of child in care whose parent moves to Scotland);
- 25 (10) the Children and Young Persons Act 1969 (except for education provisions) (see CHILDREN AND YOUNG PERSONS) (care and treatment of children and young persons through court proceedings);
- 26 (11) the Chronically Sick and Disabled Persons Act 1970 ss 1, 2 (both as amended); s 18 (see PARAS 1017, 1023 post) (information; welfare services);
- 27 (12) the Local Authority Social Services Act 1970 s 6 (as amended) (appointment of director: see PARA 1007 post); s 7B (as added) (complaints procedure: see PARA 1011 post);
- 28 (13) the Adoption Act 1976 (see CHILDREN AND YOUNG PERSONS) (adoption service; local authority adoption functions; care, possession and supervision of children awaiting adoption);
- 29 (14) the National Health Service Act 1977 Sch 8 (as amended) (see PARAS 1025-1027 post) (care of mothers and young children; prevention, care and after-care; home help and laundry facilities);
- 30 (15) the Mental Health Act 1983 Pt II (ss 2-34) (as amended); Pt III (ss 35-55) (as amended); Pt VI (ss 80-92) (as amended) (welfare of mentally disordered; guardianship; exercise of functions of nearest relative); ss 66, 67 (both as amended); s 69(1) (exercise of functions of nearest relative in relation to mental health review tribunals); s 114 (appointment of approved social workers); s 115 (entry and inspection); s 116 (as amended) (welfare of certain patients); s 117 (as amended) (after-care: see PARA 1028 post); s 130 (prosecutions) (see MENTAL HEALTH);
- 31 (16) the Registered Homes Act 1984 Pt I (ss 1-20) (as amended) (see PARA 1042 et seq post) (registration of residential care homes);
- 32 (17) the Public Health (Control of Disease) Act 1984 s 46(2), (5) (as amended) (burial and cremation of persons dying in accommodation provided under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post));
- 33 (18) the Housing Act 1996 s 213(1)(b) (see HOUSING vol 22 (2006 Reissue) PARA 300) (co-operation in relation to homeless persons and persons threatened with homelessness);
- 34 (19) the Children Act 1989 (see CHILDREN AND YOUNG PERSONS) (welfare reports; residence orders; family assistance orders; care, supervision and protection; functions in relation to homes;

research and returns of information; functions in relation to children accommodated by health authorities, education authorities, etc);

- 35 (20) the National Health Service and Community Care Act 1990 ss 46, 47 (both as amended) (see PARA 1012 et seq post) (community care plans; assessment of needs for community care services);
- 36 (21) the Education Act 1996 s 322 (see EDUCATION vol 15(2) (2006 Reissue) PARA 1024) (co-operation with local education authorities);
- 37 (22) the Carers (Recognition and Services) Act 1995 s 1 (see PARA 1016 post) (assessment of ability of carers to provide care);
- 38 (23) the Community Care (Direct Payments) Act 1996 (see PARA 1018 post) (functions in connection with making payments to persons for the provision of community care services).

8 As to the Secretary of State see PARA 1001 note 6 ante.

9 See the Local Authority Social Services Act 1970 s 2(1)(b). The Secretary of State may by order designate functions of local authorities under any other enactment for the time being in force as being appropriate for discharge through a local authority's social services committee other than functions which by virtue of that or any other enactment are required to be discharged through some other committee of a local authority; and any functions designated by an order under this provision which is for the time being in force accordingly fall within the responsibility of the social services committee: see s 2(2).

Such an order must be made by statutory instrument, a draft of which must be laid before Parliament and approved by a resolution of each House of Parliament: s 13(1), (3) (both amended by the Local Government, Planning and Land Act 1980 s 194, Sch 34 Pt XVI). Any order under this provision may be made so as to apply to England only or to Wales only: see the Local Authority Social Services Act 1970 s 13(5) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt XVI). The Secretary of State has provided by order for functions relating to the representation and assessment of disabled persons under the Disabled Persons (Services, Consultation and Representation) Act 1986 ss 1-5 (ss 1, 2, 5 as amended); s 7 (as amended); s 8 (see PARAS 1015-1017, 1023, 1064, 1072-1073 post) (except in so far as those provisions assign functions to a local education authority) and for functions relating to the obligation to give access to information under the Access to Personal Files Act 1987 s 1 (in so far as it applies to personal information held for any purposes of the local authority's social services functions) to be discharged through a local authority's social services committee: see the Local Authority Social Services (Designation of Functions) Order 1989, SI 1989/222. As to access to information see CONFIDENCE AND DATA PROTECTION.

10 Local Authority Social Services Act 1970 s 2(1). Nothing in s 2 prevents a local authority from referring to some other committee a matter which by virtue of s 2 stands referred to the social services committee, but which in the authority's opinion ought to be referred to the other committee on the ground that it relates to a general service of the authority: see s 3(2) (substituted by the Local Government, Planning and Land Act 1980 s 183(1)). However, before referring any such matter, the authority must first receive and consider a report of the social services committee with respect to the subject matter of the proposed reference: see the Local Authority Social Services Act 1970 s 3(2) (as so substituted).

11 'Social services functions' means functions matters relating to which stand referred to the social services committee by virtue of *ibid* s 2 (see the text and notes 7-10 *supra*): see s 3(1) (as substituted: see note 12 *infra*); s 15(2) (amended by the Local Government, Planning and Land Act 1980 Sch 34 Pt XVI).

12 Local Authority Social Services Act 1970 s 3(1) (substituted by the Local Government, Planning and Land Act 1980 s 183(1)).

13 Local Authority Social Services Act 1970 s 3A (added by the Local Government, Planning and Land Act 1980 s 183(2)).

14 Local Authority Social Services Act 1970 s 4(2). This power is subject to any restrictions imposed by the local authority or, as the case may be, the local authorities concurring in the establishment of the committee: s 4(2). The members of a sub-committee must include at least one member of the local authority or, as the case may be, of each of the local authorities concerned; and may include persons who are not members of the social services committee, provided they are not disqualified: s 5(4). As to disqualification see note 4 *supra*.

15 *Ibid* s 4(3). This power is subject to any restrictions imposed by the local authorities concerned: s 4(3). The members of a joint sub-committee must include at least one member of each of the local authorities concerned; and may include persons who are not members of any social services committee concurring in the establishment of the sub-committee, provided they are not disqualified: s 5(5). As to disqualification see note 4 *supra*.

16 lie under the Local Government and Housing Act 1989 s 195(2). At the date at which this volume states the law, no such day had been appointed.

17 Local Authority Social Services Act 1970 s 4(1A) (prospectively added by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 17). As to membership of such a sub-committee see note 14 *supra*.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1006 Social services committees

TEXT AND NOTES--Local Authority Social Services Act 1970 ss 2-5 repealed: Children Act 2004 s 55(1), Sch 5 Pt 4.

NOTE 7--Head (2) amended: Mental Capacity Act 2005 Sch 6 para 16(2); Health and Social Care Act 2008 s 147(5). Heads (5), (16). Registered Homes Act 1984 replaced by Care Standards Act 2000. Head (11). Chronically Sick and Disabled Persons Act 1970 s 18 repealed: Care Standards Act 2000 Sch 6. Head (12) amended: Children Act 2004 Sch 1 para 2(3). Head (11). Reference to mental health review tribunals now to First-tier Tribunal or mental health review tribunal for Wales: Local Authority Social Services Act 1970 Sch 1 (amended by SI 2008/2833). Head (13) now refers to functions continuing to be exercisable by virtue of any transitional or saving provision made by or under the Adoption and Children Act 2002: Local Authority Social Services Act 1970 Sch 1 (amended by Childcare Act 2006 Sch 2 para 1); Head (19) now refers to 'local health boards' and takes account of primary care trusts (see HEALTH SERVICES vol 54 (2008) PARA 111 et seq); Local Authority Social Services Act 1970 Sch 1 (amended by SI 2002/2469; and SI 2007/961). Head (20). National Health Service and Community Care Act 1990 s 46(1), (2) (community care plans) disapplied: SI 2003/1716. Head (23) now refers to community care services or services under the Carers and Disabled Children Act 2000: Local Authority Social Services Act 1970 Sch 1 (amended by Carers and Disabled Children Act 2000 s 9(a)). Head (23) repealed: Health and Social Care Act 2001 Sch 6 Pt 3.

Also, heads (24) the Adoption (Intercountry Aspects) Act 1999 s 2(4) (functions under the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993 art 9(a)-(c)) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 486) (Local Authority Social Services Act 1970 Sch 1 (amended by Adoption (Intercountry Aspects) Act 1999 Sch 2 para 1)); (25) the Carers and Disabled Children Act 2000 in so far as it confers functions on a local authority within the meaning of that Act (see PARA 1019A) (Local Authority Social Services Act 1970 Sch 1 (amended by Carers and Disabled Children Act 2000 s 9(b))); (26) the Health and Social Services and Social Security Adjudications Act 1983 s 17, so far as relating to s 17(2)(a)-(c) (see PARA 1019 NOTE 2 heads (1)-(3)) (Local Authority Social Services Act 1970 Sch 1 (amended by Care Standards Act 2000 s 112)); (27) the Health and Social Care Act 2001 (Pt 4 in so far as it confers functions on a local authority in England or Wales within the meaning of Pt 4) (functions in relation to the provision of residential accommodation; making of direct payments to person in respect of his securing provision of community

care services or services to carers) (Local Authority Social Services Act 1970 Sch 1 (amended by Health and Social Care Act 2001 Sch 5 para 15(3)) (in force in relation to England: SI 2001/3619, SI 2003/850); (28) the Community Care (Delayed Discharges etc) Act 2003 Pt 1 (functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely) (see PARA 1019B) (Local Authority Social Services Act 1970 Sch 1 (amended by Community Care (Delayed Discharges etc) Act 2003 s 13)) (in force in relation to England: SI 2003/2280); (29) Health and Social Care (Community Health and Standards) Act 2003 s 114 (see PARA 1011A.3) (Local Authority Social Services Act 1970 Sch 1 (amended by Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 4 (not yet in force)); (30) Carers (Equal Opportunities) Act 2004 s 3 (see PARA 1019A) in so far as it confers functions on a local authority within the meaning of s 3 (Local Authority Social Services Act 1970 Sch 1 (amended by Carers (Equal Opportunities) Act 2004 s 4)); (31) Children Act 2004 ss 9A, 13-16, 31-34 (functions relating to targets for safeguarding and promoting the welfare of children and to local safeguarding children boards) (Local Authority Social Services Act 1970 Sch 1 (amended by Children Act 2004 s 56, Apprenticeships, Skills, Children and Learning Act 2009 s 195(3)); (32) Mental Capacity Act 2005 s 39 (instructing independent mental capacity advocate before providing accommodation for person lacking capacity); s 39A (instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Sch A1); s 39C (instructing independent mental capacity advocate when no representative for relevant person under Sch A1 Pt 10 (paras 137-153)); s 39D (instructing independent mental capacity advocate when representative for relevant person under Sch A1 Pt 10 is not being paid); s 49 (reports in proceedings); Sch A1 (any functions) (Local Authority Social Services Act 1970 Sch 1 (amended by Mental Capacity Act 2005 Sch 6 para 16(3), Sch 9 para 13); and (33) Children and Young Persons Act 2008 Pt 1 (ss 1-6), in so far as it confers on a local authority in England or Wales within the meaning of Pt 1 (making arrangements for the discharge of relevant care functions in relation to certain children and young persons (Local Authority Social Services Act 1970 Sch 1 (amended by Children and Young Persons Act 2008 s 5) (in force in relation to England: SI 2009/323)).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1007. The director of social services.

1007. The director of social services.

A local authority¹ must appoint an officer, to be known as the director of social services, for the purposes of its social services functions²; and two or more local authorities which consider that the same person can efficiently discharge the director's functions for both or all of them may concur in the appointment of a person as director for both or all of those authorities³. A local authority which has appointed or concurred in the appointment of a director of social services must secure the provision of adequate staff to assist the director in the exercise of his functions⁴.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Local Authority Social Services Act 1970 s 6(1). For the meaning of 'social services functions' see PARA 1006 note 11 ante.

The director of social services of a local authority must not, without the approval of the Secretary of State (given generally or in relation to a particular authority), be employed by that authority in connection with the discharge of any of its functions other than its social services functions: s 6(5). As to the Secretary of State see PARA 1001 note 6 ante.

The appointment of a director of social services is a function of a local authority which stands referred to the authority's social services committee: see PARA 1006 note 7 head (12) ante.

3 Ibid s 6(2).

4 Ibid s 6(6).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1007 The director of social services

TEXT AND NOTES--A local authority in England must appoint an officer, to be known as the director of adult social services, for the purposes of its social services functions, other than those for which the authority's director of children's services is responsible under the Children Act 2004 s 18 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 190): 1970 Act s 6(A1) (added by the 2004 Act Sch 1 para 2(2)(a)).

NOTE 2--1970 Act s 6(1) now only applies to Wales: Children Act 2004 Sch 1 para 2(2) (b).

NOTES 3, 4--1970 Act s 6(2), (6) now also apply to the director of adult social services: Children Act 2004 Sch 1 para 2(2)(c), (d).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1008. Acquisition of land.

1008. Acquisition of land.

For the purposes of any of its functions under any enactment¹, a principal council² may acquire by agreement or be authorised to compulsorily purchase any land, whether situated inside or outside its area³.

¹ ie including its functions under the National Assistance Act 1948 Pt III (ss 21-36) (as amended). See PARA 1020 et seq post.

² 'Principal council' means a council elected for a principal area; and 'principal area' means a non-metropolitan county, a district or a London borough, but, in relation to Wales, means a county or county borough: Local Government Act 1972 s 270(1) (amended by the Local Government Act 1985 s 102(1), Sch 16 para 8; and the Local Government (Wales) Act 1994 ss 1(4)-(8), 66(5), Sch 15 paras 1, 57). See LOCAL GOVERNMENT vol 69 (2009) PARA 23.

³ See the Local Government Act 1972 ss 120(1)(a), 121(1); and LOCAL GOVERNMENT vol 69 (2009) PARAS 509-510. The Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended), with the exception of s 31 (as amended), applies to any such acquisition by agreement: see the Local Government Act 1972 s 120(3); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 877; LOCAL GOVERNMENT vol 69 (2009) PARA 509. The Acquisition of Land Act 1981 applies to any such compulsory purchase: see the Local Government Act 1972 s 121(4) (as amended); and COMPULSORY ACQUISITION OF LAND; LOCAL GOVERNMENT vol 69 (2009) PARA 510.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1009. Financial and other assistance; adjustments between local authorities.

1009. Financial and other assistance; adjustments between local authorities.

The expenditure of a local authority¹ in respect of the provision of assistance and welfare services is discharged in the usual way out of its appropriate fund².

Expenditure which would otherwise fall to be borne by a local authority in the provision of accommodation³ and certain services⁴ for a person ordinarily resident⁵ in the area of another local authority⁶ is recoverable from that other local authority⁷.

A local social services authority⁸ which provides premises, furniture or equipment for any of the purposes of the National Health Service Act 1977 may permit⁹ the use of the premises, furniture or equipment by (1) any other local social services authority; (2) any of the bodies constituted under the National Health Service Act 1977; or (3) a local education authority¹⁰.

A local social services authority may provide or improve or furnish residential accommodation for officers employed by it for the purposes of any of its functions as a local social services authority¹¹.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 See LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 514 et seq. Local authorities receive an annual grant, known as revenue support grant: see the Local Government Finance Act 1988 s 78 (as amended); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 514 et seq.

3 I.e. under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post): see s 32(1)(a).

For these purposes, it is to be assumed that the expenditure incurred by a local authority in providing accommodation for any person is, as respects accommodation provided in premises managed by a local authority, at the rate for the time being fixed for that accommodation under s 22(2) (as amended) (see PARA 1035 post) and, as respects accommodation provided pursuant to an arrangement made under s 26 (as amended), at the rate referred to in s 26(2) (as amended) (see PARA 1033 post): s 32(2).

4 I.e. (1) welfare services under *ibid* s 29 or the Health Services and Public Health Act 1968 s 45 (see PARA 1024 post) (see the National Assistance Act 1948 s 32(1)(b); and the Health Services and Public Health Act 1968 s 45(5)(a)); or (2) the conveyance of a person to and from accommodation under the National Assistance Act 1948 s 21(7)(a) (see PARA 1030 post) (see s 32(1)(c)).

5 As to ordinary residence see PARA 1032 note 3 post.

6 This includes a local authority in Scotland: see the National Assistance Act 1948 s 32(1) (amended by the Social Work (Scotland) Act 1968 ss 95(1), 97(1), Sch 8 para 14).

7 National Assistance Act 1948 s 32(1).

8 As to the meaning of 'local social services authority' see PARA 1005 ante.

9 This permission may be on such terms, including terms with respect to the services of any staff employed by the authority giving permission, as may be agreed: National Health Service Act 1977 s 21(2).

10 *Ibid* s 21(2).

11 *Ibid* s 21(3)(a).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1009 Financial and other assistance; adjustments between local authorities

TEXT AND NOTES 9-11--1977 Act s 21 now as consolidated in National Health Service Act 2006 s 254, National Health Service (Wales) Act 2006 s 192. The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services provided under the National Health Service Act 2006 s 254: see the Health and Social Care Act 2008 ss 149-156; Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1010. Financial and other assistance to voluntary organisations.

1010. Financial and other assistance to voluntary organisations.

The Secretary of State¹ may give to a voluntary organisation², upon such terms and subject to such conditions as he may with Treasury approval determine, assistance by way of grant or loan, or partly by grant and partly by loan³, if the organisation's activities consist in or include the provision of a service similar to a relevant service⁴, the promotion of the provision of a relevant service or a similar one, the publicising of a relevant service or a similar one or the giving of advice with respect to the manner in which a relevant service or a similar one can best be provided⁵.

The Secretary of State⁶ may make grants to certain bodies⁷, for such purposes as he may determine⁸. Any grant made may be of such amount, and subject to such conditions, as the Secretary of State may with the consent of the Treasury determine⁹; and is payable out of money provided by Parliament¹⁰.

A local authority¹¹ may give assistance by way of grant or loan, or partly by grant and partly by loan, to a voluntary organisation whose activities consist in, or include, the provision of a service similar to a relevant service¹², the promotion of the provision of a relevant service or a similar one, the publicising of a relevant service or a similar one, or the giving of advice with respect to the manner in which a relevant service or a similar one can best be provided¹³. A local authority may also assist any such voluntary organisation by permitting it to use premises belonging to the authority on agreed terms, and by making available furniture, vehicles or equipment, whether by way of gift or loan or otherwise, and the services of any staff employed by the authority in connection with the premises or other things which the authority permits the organisation to use¹⁴.

A local social services authority¹⁵ may provide, or improve or furnish, residential accommodation for officers employed by a voluntary organisation for the purpose of any of certain services¹⁶.

1 The Health Services and Public Health Act 1968 s 64(1) refers to the Minister of Health, whose functions have been transferred to the Secretary of State for Health, and references to the minister are to be read as references to the Secretary of State: see the Secretary of State for Social Services Order 1968, SI 1968/1699; and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State see PARA 1001 note 6 ante.

2 'Voluntary organisation' means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority: Health Services and Public Health Act 1968 ss 64(3)(c), 65(3)(d).

3 Ibid s 64(1).

4 For these purposes, 'relevant service' means a service which must or may, by virtue of any of the relevant enactments, be provided, or the provision of which must or may, by virtue of those enactments, be secured by the Secretary of State or the council of a non-metropolitan county, county borough, metropolitan district or London borough council or the Common Council of the City of London or a service for the provision of which a Health Authority is, by virtue of the National Health Service Act 1977 Pt II (ss 29-56) (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 241 et seq), under a duty to make arrangements: Health Services and Public Health Act 1968 s 64(3)(b) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 125; the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 5(2); and the Health Authorities Act 1995 s 2(1), Sch 1 Pt III para 95(1), (3)). 'Relevant enactments' means:

- 39 (1) the Children and Young Persons Act 1933 Pt III (ss 31-76) (as amended); Pt IV (ss 77-91) (as amended); (Health Services and Public Health Act 1968 s 64(3)(a)(i) (s 64(3)(a) substituted by the Children Act 1975 s 108(1)(a), Sch 3 para 46)
- 40 (2) the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post); (Health Services and Public Health Act 1968 s 64(3)(a)(iii) (as so substituted))
- 41 (3) the Mental Health Act 1983 s 116 (as amended), so far as it relates to cases mentioned in s 116(2)(a) (as substituted); (Health Services and Public Health Act 1968 s 64(3)(a)(viii) (as so substituted); Interpretation Act 1978 s 17(2)(a))
- 42 (4) the Children and Young Persons Act 1963, except for Pt II (ss 34-44) (as amended) and s 56 (as amended); (Health Services and Public Health Act 1968 s 64(3)(a)(x) (as so substituted));
- 43 (5) the Health Services and Public Health Act 1968: s 64(3)(a)(xi) (as so substituted);
- 44 (6) the Children and Young Persons Act 1969; (Health Services and Public Health Act 1968 s 64(3)(a)(xiv) (as so substituted; and amended by the Child Care Act 1980 s 89(3), Sch 6);
- 45 (7) the Adoption Act 1976; (Health Services and Public Health Act 1968 s 64(3)(a)(xviii) (added by the Adoption Act 1976 s 73(2), Sch 3 para 9));
- 46 (8) the National Health Service Act 1977; (Health Services and Public Health Act 1968 s 64(3)(a)(xix) (added by the National Health Service Act 1977 s 129, Sch 15 para 46 (as amended)));
- 47 (9) the Children Act 1989: (Health Services and Public Health Act 1968 s 64(3)(a)(xx) (added by the Child Care Act 1980 s 89(2), Sch 5 para 19 (repealed); substituted and renumbered by the Children Act 1989 s 108(5), Sch 13 para 17(1))).

The Family Law Reform Act 1969 s 7(4) (repealed) and the Children Act 1975 (repealed) are also listed as relevant enactments: see the Health Services and Public Health Act 1968 s 64(3)(a)(xiii), (xvii) (as so substituted).

5 Ibid s 64(2).

6 See PARA 1001 note 6 ante.

7 The bodies are: (1) the Independent Living (Extension) fund established by a deed dated 25 February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part; (2) the Independent Living (1993) Fund established by a deed of the same date made between the same parties; and (3) Motability (a body corporate constituted by royal charter): see the Disability (Grants) Act 1993 s 1(1)(a), (b), (c).

8 Ibid s 1(1). These provisions apply with modifications to Northern Ireland: see ss 1(4), 2(2).

9 Ibid s 1(2).

10 Ibid s 1(3).

11 For the purposes of the Health Services and Public Health Act 1968 s 65 (as amended), 'local authority' means (except where used in the expression 'public or local authority') the council of a county, other than a metropolitan county, or of a county borough, metropolitan district or London borough or the Common Council of the City of London: s 65(3)(a) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 15(4); and the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 5(3)). As to local authorities generally see PARA 1005 ante.

12 For these purposes, 'relevant service' means a service the provision of which must or may, by virtue of the relevant enactments, be secured by a local authority: Health Services and Public Health Act 1968 s 65(3)(c). 'Relevant enactments' means (1) the enactments listed in note 4 supra; (2) the Disabled Persons (Employment) Act 1958 s 3 (as amended); (3) the Matrimonial Causes Act 1973 s 43 (repealed with savings): Health Services and Public Health Act 1968 s 65(3)(b) (substituted by the Children Act 1975 s 108(1)(a), Sch 3 para 47; and amended by the Adoption Act 1976 s 73, Sch 3 para 10, Sch 4; the National Health Service Act 1977 s 129, Sch 15 para 47 (as amended), Sch 16; the Child Care Act 1980 s 89, Sch 5 para 20, Sch 6 (all repealed); and the Children Act 1989 s 108(7), Sch 13 para 17(2), Sch 15).

13 Health Services and Public Health Act 1968 s 65(1) (amended by the Local Government Act 1985 s 102(2), Sch 17). These provisions have effect in place of earlier provisions authorising the giving of assistance to voluntary organisations: see the Health Services and Public Health Act 1968 s 65(4).

14 Ibid s 65(2) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 5). See also note 13 supra. Similar provision is made in respect of meals and recreation provided for old people: see the Health and Social Services and Social Security Adjudications Act 1983 s 29(2), Sch 9 Pt II (as amended); and PARA 1024 post.

15 As to the meaning of 'local social services authority' see PARA 1005 ante.

16 The services provided under the National Health Service Act 1977 s 21, Sch 8 (both as amended) (see PARAS 1025-1027 post): s 21(3)(b).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1010 Financial and other assistance to voluntary organisations

NOTE 4--In the definition of 'relevant service' for 'health authority' read 'primary care trust (see HEALTH SERVICES vol 54 (2008) PARA 111 et seq) or local health board': 1968 Act s 64(3)(b) (amended by National Health Service Reform and Health Care Professions Act 2002 Sch 2 para 40(3); and SI 2007/961).

1968 Act s 64(3) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 39; Criminal Justice and Immigration Act 2008 Sch 4 para 9.

NOTE 7--Also (4) the Independent Living Fund (2006) established by a deed dated 10 April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part: 1993 Act s 1(1)(d) (added by Welfare Reform Act 2007 s 61(1)(b)). As from a day to be appointed heads (1) and (2) cease to have effect: 2007 Act s 61(1)(a), Sch 8. See further s 61(3)-(6).

The trustees of the Independent Living Fund (2006) must send a copy of the accounts of the Fund for each financial year ending on or after 31 March 2008 to the Comptroller and Auditor General for examination: Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008, SI 2008/817.

NOTE 8--1993 Act s 1(4) amended: 2007 Act s 61(2), Sch 8. See further s 61(3)-(6).

NOTE 12--1968 Act s 65(3)(b) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 40; Criminal Justice and Immigration Act 2008 Sch 4 para 10.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1011. Powers of Secretary of State in relation to exercise of social services functions by local authorities.

1011. Powers of Secretary of State in relation to exercise of social services functions by local authorities.

In the exercise of their social services functions¹, including the exercise of any discretion conferred by any relevant enactment, local authorities² must act under the general guidance of the Secretary of State³.

The Secretary of State may also give directions to local authorities which must exercise their social services functions in accordance with those directions⁴. Directions must be given in writing⁵ and may be given to a particular authority or to authorities of a particular class or to authorities generally⁶.

The Secretary of State may by order require local authorities to establish a procedure for considering any representations (including any complaints) which are made by a qualifying individual⁷, or anyone acting on his behalf, in relation to the discharge of, or any failure to discharge, any social services functions in respect of that individual⁸. A local authority must comply with any directions given by the Secretary of State as to the procedure to be adopted in considering such representations and as to the taking of such action as may be necessary in consequence of the representations⁹. Local authorities must give such publicity to any procedure established pursuant to these provisions as they consider appropriate¹⁰.

The Secretary of State may cause an inquiry to be held in any case where, whether on representations to him or otherwise, he considers it advisable to do so in connection with the exercise by any local authority of any of its social services functions (except in so far as those functions relate to persons under the age of 18)¹¹.

If satisfied that any local authority has failed, without reasonable excuse, to comply with any of its duties which are social services functions¹², the Secretary of State may make an order declaring that authority to be in default with respect to the duty in question¹³. The order may contain such directions as appear to the Secretary of State to be necessary for the purposes of ensuring that the duty is complied with within such period as may be specified in the order¹⁴.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities incurred in connection with the exercise of social services functions in relation to persons suffering from mental illness or incurred in making payments, in accordance with directions given by the Secretary of State, to voluntary organisations which provide care and services for persons who are, have been or are likely to become dependent upon alcohol or drugs¹⁵.

1 For the meaning of 'social services functions' see PARA 1006 note 11 ante.

2 As to the meaning of 'local authority' see PARA 1005 ante.

3 Local Authority Social Services Act 1970 s 7(1). As to the Secretary of State see PARA 1001 note 6 ante. As to the effect of the guidance which has been issued by the Secretary of State see *R v Islington London Borough Council, ex p Rixon* (1996) 32 BMLR 136.

4 Local Authority Social Services Act 1970 s 7A(1) (s 7A added by the National Health Service and Community Care Act 1990 s 50).

5 Local Authority Social Services Act 1970 s 7A(2)(a) (as added: see note 4 supra).

6 Ibid s 7A(2)(b) (as added: see note 4 supra).

7 In relation to a particular local authority, an individual is a qualifying individual if the authority has a power or a duty to provide or to secure the provision of a service for him and his need or possible need for such a service has (by whatever means) come to the attention of the authority, or if he is in receipt of payment from the authority under the Community Care (Direct Payments) Act 1996 (see PARA 1018 post): Local Authority Social Services Act 1970 s 7B(2) (s 7B added by the National Health Service and Community Care Act 1990 s 50; Local Authority Social Services Act 1970 s 7B(2) amended by the Community Care (Direct Payments) Act 1996 s 3(1), (2)).

8 Local Authority Social Services Act 1970 s 7B(1) (as added: see note 7 supra); and see the Local Authority Social Services (Complaints Procedure) Order 1990, SI 1990/2244.

9 Local Authority Social Services Act 1970 s 7B(3) (as added: see note 7 supra). The Secretary of State, in the exercise of his powers under s 7B(3) (as added), has issued the Complaints Procedure Directions 1990 which came into force on 1 April 1991. These directions require a local authority to appoint an officer to co-ordinate consideration of complaints; to formulate a response to representations received from a complainant within 28 days if possible; to notify the complainant of the result of its consideration of the representations; to appoint a panel to review its consideration of complaints; and to keep a record of all representations received and the outcome of the representations.

10 Local Authority Social Services Act 1970 7B(4) (as added: see note 7 supra).

11 Ibid s 7C(1) (s 7C added by the National Health Service and Community Care Act 1990 s 50). The Local Government Act 1972 s 250(2)-(5) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies in relation to inquiries under the Local Authority Social Services Act 1970 s 7C(1) (as added) as it applies in relation to inquiries under that provision: s 7C(2) (as so added).

The Secretary of State may also cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under the National Health Service Act 1977 or the National Health Service and Community Care Act 1990 Pt I (ss 1-26) (as amended): see the National Health Service Act 1977 s 84(1) (as amended).

12 Ie other than a duty imposed by or under the Children Act 1989: see the Local Authority Social Services Act 1970 s 7D(1) (as added: see note 13 infra).

13 Ibid s 7D(1) (s 7D added by the National Health Service and Community Care Act 1990 s 50).

14 Local Authority Social Services Act 1970 s 7D(2) (as added: see note 13 supra). On the application of the Secretary of State, any such direction is enforceable by mandamus: s 7D(3) (as so added). As to judicial review see JUDICIAL REVIEW.

15 Ibid s 7E (added by the National Health Service and Community Care Act 1990 s 50). As to social services functions in relation to persons suffering from mental illness see PARA 1028 post; and MENTAL HEALTH vol 30(2) (Reissue) PARA 424 et seq. As to financial and other assistance to voluntary organisations see PARA 1010 ante.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

1011 Powers of Secretary of State in relation to exercise of social services functions by local authorities

NOTE 3--See also *R (on the application of AB and SB) v Nottingham CC* [2001] EWHC 235 (Admin), [2001] 3 FCR 349; *B v Lewisham LBC* [2008] EWHC 738 (Admin), [2008] 2

FLR 523, [2008] All ER (D) 248 (Apr); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 853.

NOTE 7--1970 Act s 7B repealed: Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 2 (in force in relation to England: SI 2006/1680). 1996 Act s 3 repealed: Health and Social Care Act 2001 Sch 6 Pt 3 (in force in relation to England: SI 2003/850).

NOTE 8--See also Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768).

NOTE 11--1977 Act s 84 repealed: Inquiries Act 2005 ss 48(1), 49(2), Sch 2 para 7, Sch 3.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1011A. The Care Quality Commission

1011A. The Care Quality Commission

1. Functions and objectives

A body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1). The Commission has the functions conferred on it by or under any enactment: s 2(1). Those functions include (1) registration functions under Pt 1 Ch 2 (ss 8-44) (see PARA 1001A); (2) review and investigation functions under Pt 1 Ch 3 (ss 45-51) (see PARA 1011A.3); and (3) functions under the Mental Health Act 1983: Health and Social Care Act 2008 s 2(2).

The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: s 3(1). The Commission is to perform its functions for the general purpose of encouraging the improvement of health and social care services, the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and the efficient and effective use of resources in the provision of health and social care services: s 3(2). For these purposes 'health and social care services' means the services to which the Commission's functions relate: s 3(3).

In performing its functions the Commission must have regard to: (a) views expressed by or on behalf of members of the public about health and social care services; (b) experiences of people who use health and social care services and their families and friends; (c) views expressed by local involvement networks about the provision of health and social care services in their areas; (d) the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children, of persons detained under the Mental Health Act 1983, of persons who are deprived of their liberty in accordance with the Mental Capacity Act 2005, and of other vulnerable adults); (e) the need to ensure that action by the Commission in relation to health and social care services is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed; (f) any developments in approaches to regulatory action; and (g) best practice among persons performing functions comparable to those of the Commission (including the principles under which regulatory action ought to be transparent, accountable and consistent): s 4(1). In performing its functions the Commission must also have regard to such aspects of government policy as the Secretary of State may direct: s 4(2). For the purposes of head (c) 'local involvement network' has the meaning given by the Local Government and Public Involvement in Health Act 2007 s 222(2) (see HEALTH SERVICES vol 54 (2008) PARA 526): Health and Social Care Act 2008 s 4(3).

The Secretary of State may confer additional functions on the Commission through regulations: see s 59 and the Care Quality (Additional Functions) Regulations 2009, SI 2009/410. If the Secretary of State considers that the Commission is failing to carry out any of its functions, or to carry them out properly, he may issue a direction to the Commission: see Health and Social Care Act 2008 s 82.

The Commission must secure that copies of any register kept for the purposes of Pt 1 Ch 2 are available at its offices for inspection at all reasonable times by any person, however regulations may be made setting out what information should not be accessible: see the Health and Social Care Act 2008 s 38.

For further general provision as to the Commission's status, general powers and duties, membership, remuneration and allowances, and accounts, see Sch 1; and the Care Quality Commission (Membership) Regulations 2008, SI 2008/2252. As to the transfer of property and staff from the Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection and the Mental Health Act Commission (all of which are dissolved (Health and Social Care Act 2008 s 1(2)) to the Care Quality Commission, see Sch 2.

2. Statement on user involvement

The Care Quality Commission (see PARA 1011A.1) must publish a statement describing how it proposes to (1) promote awareness among service users and carers of its functions; (2) promote and engage in discussion with service users and carers about the provision of health and social care services and about the way in which the Commission exercises its functions; (3) ensure that proper regard is had to the views expressed by service users and carers; and (4) arrange for any of its functions to be exercised by, or with the assistance of, service users and carers: Health and Social Care Act 2008 s 5(1). The Commission may from time to time revise the statement and must publish any revised statement: s 5(2). Before publishing the statement (or revised statement) the Commission must consult such persons as it considers appropriate: s 5(3). For these purposes 'service users' means people who use health or social care services; and 'carers' means people who care for service users as relatives or friends: s 5(4). 'Health and social care services' has the meaning given by s 3(3) (see PARA 1011A.1): s 7.

3. Reviews and investigations

In respect of each English local authority the Care Quality Commission must conduct reviews of the provision of adult social services provided or commissioned by the authority, assess the authority's performance following each such review, and publish a report of its assessment: Health and Social Care Act 2008 s 46(3). The assessment of a body's performance is to be by reference to such indicators of quality as the Secretary of State may devise or approve: s 46(4). The Secretary of State may direct the Commission to devise indicators for the purposes of s 46(4) and submit them to the Secretary of State for approval: s 46(5). The Commission must prepare a statement describing the method that it proposes to use in assessing and evaluating a body's performance under this provision, and submit the statement to the Secretary of State for approval: s 46(6). Different indicators may be devised or approved, and different methods may be described, for different cases: s 46(7). The Commission must publish the indicators devised or approved from time to time by the Secretary of State, and the method statement approved from time to time by the Secretary of State: s 46(8). The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under this provision: s 46(9). For these purposes 'English local authority' means a county council in England, a metropolitan district council, a non-metropolitan district council for an area for which there is no county council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly; 'adult social services' means (1) services which are provided or commissioned by an English local authority in the exercise of its adult social services functions; and (2) services which are provided or commissioned by an English local authority under the Local Government Act 2000 s 2(1)(b) (see LOCAL GOVERNMENT vol 69 (2009) PARA 463) and which are similar in nature to a service which could be provided by the authority in the exercise of any of its adult social services functions; and 'adult social services functions' means social services functions (within the meaning of the Local Authority Social Services Act 1970) so far as relating to persons aged 18 or over, excluding any function to which the Education and Inspections Act 2006 Pt 8 Ch 4 (ss 135-145) applies: Health and Social Care Act 2008 s 97(1).

The Commission must prepare a document setting out the frequency with which reviews under s 46 are to be conducted and the period to which they are to relate, and submit the document to the Secretary of State for approval: s 47(1). The document may make different provision for different cases and the Commission may revise the document from time to time with the approval of the Secretary of State: s 47(2), (3). The Commission must publish the document as approved by the Secretary of State and as revised from time to time: s 47(4).

The Commission may conduct any special review or investigation, and must do so if the Secretary of State so requests: s 48(1). A special review or investigation is a review (other than a periodic review) of, or an investigation into, the provision of adult social services: s 48(2)(b). Such a review or investigation may relate (a) to the overall provision of adult social services or to the provision of adult social services of a particular description; (b) to the overall exercise of functions or to the exercise of functions of a particular description; (c) to the provision of care or services or the exercise of functions by bodies or persons generally or by particular bodies or persons: see s 48(3). Where the Commission conducts a review or investigation under this provision, it must publish a report: s 48(4). The Commission must consider whether the report raises anything on which it ought to give advice to the Secretary of State under s 53(2): s 48(5). The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under s 48(4): s 48(7). As to the duty of the Commission to publish a document setting out the special reviews and investigations that it proposes to conduct under s 48, see s 81.

The Secretary of State may by regulations require the Commission to conduct periodic reviews of the carrying on of regulated activities by registered service providers, and either publish reports of such reviews, or assess the performance of registered service providers following such reviews and publish reports of its assessment: s 49(1). Such regulations may require the Commission to conduct periodic reviews in relation to (i) all regulated activities or regulated activities of a particular description; (ii) all registered service providers or particular registered service providers; (iii) the whole of a regulated activity or a particular aspect of it: s 49(2). In the case of a regulated activity carried on by a Primary Care Trust, another English NHS provider or an English local authority, s 49(1) does not apply to the carrying on of that activity by that body to the extent that the carrying on of that activity by that body is already subject to periodic review under s 46, but this does not prevent the Secretary of State from requiring the Commission to conduct periodic reviews of a particular aspect of the activity as carried on by that body: s 49(3). If regulations under s 49(1) require the Commission to conduct periodic reviews, ss 46(4)-(9), 47 have effect in relation to the reviews as they have effect in relation to reviews under s 46: s 49(4). In s 49, 'registered service provider' means a person registered under Pt 1 Ch 2 (ss 8-44) (see PARA 1001A) as a service provider: s 49(5).

The following provisions apply where the Commission conducts a review under s 46 or 49, or a review or investigation under s 48, in respect of an English local authority: s 50(1). If the Commission considers that the local authority is failing to discharge any of its adult social services functions to an acceptable standard, then subject to s 50(3) the Commission must inform the Secretary of State of that fact, and recommend any special measures which it considers the Secretary of State should take: s 50(2). If the Commission considers that the failure is not substantial, it may instead give the local authority a notice under s 50(4), and inform the Secretary of State that it has done so: s 50(3). A notice under s 50(4) is a notice which specifies the respects in which the Commission considers that the local authority is failing, the action which the Commission considers the local authority should take to remedy the failure, and the time by which the Commission considers the action should be taken: s 50(4). If the Commission recommends that the Secretary of State take special measures in relation to the local authority, the Commission must, if the Secretary of State so requests conduct a further review under s 48 in relation to the authority, and include in its report under s 48(4) report on such matters as the Secretary of State may specify: s 50(5). As to service of documents see s 93, and as to electronic communications see s 94.

The Secretary of State and the National Assembly for Wales have power to make regulations about the handling and consideration of complaints about social services: see the Health and Social Care (Community Health and Standards) Act 2003 ss 114, 115 (s 114 amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 76, Sch 7; the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 243; the Local Government and Public Involvement in Health Act 2007 Sch 12 para 18; and the Health and Social Services Act 2008 Sch 5 para 46).

4. Other functions

The Care Quality Commission must keep the Secretary of State informed about the provision of adult social services and the carrying on of regulated activities (see PARA 1001A.1): see the Health and Social Care Act 2008 s 53(1). The Commission may at any time give the Secretary of State advice on anything connected with those matters and that advice may in particular include advice on any changes that the Commission thinks ought to be made to regulations under s 20 (regulation of regulated activities) (see PARA 1001A.3): see s 53(2), (3). When requested to do so by the Secretary of State, the Commission must give the Secretary of State such advice or information in connection with a matter mentioned in s 53(1) as may be specified in the request: s 53(4). The Commission may give advice to the Secretary of State or an English local authority about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or local authority in relation to the provision of adult social services by or pursuant to arrangements made by that authority: see s 53(5). For the meaning of 'English local authority' and 'adult social services' see PARA 1011A.3.

The Commission may undertake or promote comparative or other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the provision of adult social services by an English local authority, or the way in which adult social services are commissioned: see s 54. The Commission must publish recommendations made, and results of studies undertaken, under s 54: see s 55. As to the duty of the Commission to publish a document setting out the studies that it proposes to conduct under s 54, see s 81. The Commission and the Audit Commission may exercise jointly their respective functions under (1) s 54 (and s 60 (see PARA 1011A.5) in its application to functions under that provision) so far as relating to English local authorities; and (2) the Audit Commission Act 1998 ss 33, 34: Health and Social Care Act 2008 s 56(4). The Commission and the Audit Commission must have regard to any guidance issued by the Secretary of State as to which of the Commission and the Audit Commission should promote or undertake studies which could be promoted or undertaken by either of them: s 56(5). Section 56(4) is not to be taken to prejudice any other power of the Commission and the Audit Commission to act jointly: s 56(6). For these purposes 'the Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England: s 56(7).

The Commission may review (a) studies and research undertaken by others, or the quality of data obtained by others, in relation to the provision of adult social services or the carrying on of regulated activities; (b) the methods used in undertaking such studies and research or in collecting and analysing such data; and (c) the validity of conclusions drawn from such studies and research or from such data: see s 57(1). The Commission must conduct a review under s 57(1) if the Secretary of State so requests: s 57(2). If the Commission conducts a review under this provision it must publish a report: s 57(3). As to the duty of the Commission to publish a document setting out the reviews that it proposes to conduct under s 57, see s 81. The Commission may make information available about the provision of adult social services and the carrying on of regulated activities: see s 58.

As soon as possible after the end of each financial year, the Commission must make a report on the way in which it has exercised its functions during the year, the provision of adult social services during the year, the carrying on of regulated activities during the year, and the steps

taken by it during the year to implement the proposals in its statement under s 5 (statement on user involvement) (see PARA 1011A.2): see s 83. For these purposes 'financial year' means the period beginning with the date on which the Commission is established and ending with the next 31 March following that date, and each successive period of 12 months ending with 31 March: s 83(7).

The Commission must make copies of any report published by it under any provision of Pt 1 (ss 1-97) available for inspection at its offices by any person at any reasonable time: s 84(1), (2). Any person who requests a copy of the report is entitled to have one on payment of such reasonable fee (if any) as the Commission considers appropriate: s 84(3). The Commission may charge a person such reasonable fee as it considers appropriate where it provides the person, on request, with any other information relevant to the exercise of the Commission's functions: s 84(4).

5. Inspections and powers of entry etc

The Care Quality Commission may, for the purposes of its regulatory functions, carry out inspections of the carrying on of a regulated activity (see PARA 1001A.1) or the provision of adult social services (see PARA 1011A.3): see the Health and Social Care Act 2008 s 60(1). For the purposes of Pt 1 (ss 1-97), the 'regulatory functions' of the Commission are its functions under Pt 1 Chs 2, 3 and 5 (ss 8-51, 53-59) except its functions under s 53 (information and advice) (see PARA 1011A.4), its functions under s 57 (reviews of data, studies and research) (see PARA 1011A.4), and its functions under regulations under s 59 (additional functions) (see PARA 1011A.1) to the extent that the regulations provide that they are not to be treated as regulatory functions for the purposes of Pt 1: s 60(2). Regulations may prescribe the frequency of such inspections, the manner in which they are to be carried out and who may carry them out: see s 61.

If the Commission considers it necessary or expedient for the purposes of any of its regulatory functions, a person authorised by the Commission may enter and inspect any premises which are, or which the person reasonably believes to be, regulated premises: s 62(1), (2). Premises are 'regulated premises' if they are used for the carrying on of a regulated activity, they are owned or controlled by an English local authority, or they are used or proposed to be used for or in connection with the provision of adult social services: see s 62(3). For the meaning of 'English local authority' and 'adult social services' see PARA 1011A.3. If adult social service is provided to a person in premises used wholly or mainly as a private dwelling, the premises are not to be regarded as used for or in connection with the provision of that service: see s 62(4). A person who proposes to exercise the power conferred by s 62(2) must if so required produce some duly authenticated document showing the person's authority to exercise the power: s 62(5). 'Premises' includes a vehicle: s 62(6). A person authorised by the Commission may, if they consider it necessary or expedient for the purposes of any of the Commission's regulatory functions: (1) make any examination into the state and management of the premises or the treatment of persons receiving care there; (2) inspect and take copies of any documents or records; (3) have access to, and check the operation of, any computer, and any associated apparatus or material, which is or has been in use in connection with any documents or records; (4) inspect any other item; (5) seize and remove from the premises any documents, records or other items; (6) interview in private (a) any person who carries on or manages a regulated activity, or who manages the provision of adult social services, at the premises; (b) any person working at the premises; and (c) any person receiving care at the premises who consents to be interviewed; and (7) if (a) the authorised person is a medical practitioner or registered nurse; and (b) the authorised person has reason to believe that the person to be examined is not receiving proper care; and (c) the person to be examined is capable of giving consent and does so, or is incapable of giving consent, examine in private any person receiving care at the premises: see s 63. A person who without reasonable excuse obstructs the exercise of a power conferred by s 62 or 63, or fails to comply with a requirement imposed under s 63,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 63(7).

As to the general power of the Commission to require information, documents, records and other items, see s 64. Regulations may require a prescribed person to provide the Commission with an explanation of any documents, records or other items inspected, copied or provided under ss 62-64: see s 65.

6. Interaction with other authorities

The Care Quality Commission may delegate any of its functions relating to, or connected with, inspections carried out by the Commission under s 60 ('inspection functions') (see PARA 1011A.5) to another public authority: Health and Social Care Act 2008 Sch 4 paras 2, 4(1). For these purposes 'public authority' includes any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament, or a public authority outside the United Kingdom: see Sch 4 para 3(1), (2). In relation to a particular act, a person is not a public authority by virtue of Sch 4 para 3(1) if the nature of the act is private: Sch 4 para 3(3). If the carrying out of an inspection is delegated it is nevertheless to be regarded for the purposes of any enactment as carried out by the Commission: Sch 4 para 4(2).

The Commission must from time to time, or at times specified by the Secretary of State, produce both an inspection programme setting out the inspections it intends to carry out, and an inspection framework, which sets out how it intends to carry out its inspection and reporting functions: Sch 4 para 5(1). Before preparing an inspection programme or an inspection framework the Commission must consult the Secretary of State, the inspection authorities, and any other person or body specified by an order made by the Secretary of State, and it must send to each of those persons or bodies a copy of each programme or framework once it is prepared: Sch 4 para 5(2). For these purposes, the inspection authorities are (1) Her Majesty's Chief Inspector of Prisons; (2) Her Majesty's Chief Inspector of Constabulary; (3) Her Majesty's Chief Inspector of the Crown Prosecution Service; (4) Her Majesty's Chief Inspector of the National Probation Service for England and Wales; (5) Her Majesty's Chief Inspector of Court Administration; (6) Her Majesty's Chief Inspector of Education, Children's Services and Skills; and (7) the Audit Commission for Local Authorities and the National Health Service in England: Sch 4 para 1(2). The requirements under Sch 4 para 5 do not prevent the Commission from carrying out unannounced inspections: see Sch 4 para 5(5). If an inspection authority, or any other person or body specified by order made by the Secretary of State, is proposing to carry out an inspection that would involve inspecting a specified organisation, and the Commission considers that the proposed inspection would impose an unreasonable burden on the specified organisation, or would do so if carried out in a particular way, the Commission must give a notice to the specified inspector requiring the inspector not to carry out the proposed inspection, or not to carry it out in that way; the Secretary of State may specify, by order, circumstances in which this power should not apply: see Sch 4 para 6.

The Commission must co-operate with the inspection authorities or other public authorities specified by an order of the Secretary of State: see Sch 4 para 7. It may act jointly with other public authorities where it is appropriate to do so for the efficient and effective exercise of its functions (Sch 4 para 8), may provide advice or assistance to other public authorities (Sch 4 para 9), and may make arrangements with other inspection authorities to carry out inspections on their behalf (Sch 4 para 10).

The Commission must promote the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the carrying on of regulated activities: s 67.

The Secretary of State may publish guidance about steps which the Commission, and such other bodies as may be prescribed, may take to avoid imposing unreasonable burdens on

health and social care organisations when carrying out inspections, or collecting information: see s 68.

As to co-operation between the Commission and the Welsh Ministers, see s 69, and as to the provision of material to the Comptroller and Auditor general, see s 72. A minister of the Crown may arrange for the Commission to carry out any of its functions in relation to prescribed social care schemes for which the minister has responsibility: see s 73.

7. Inquiries

The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the Care Quality Commission of any of its functions: Health and Social Care Act 2008 s 75(1). As to the Commission's functions, see PARA 1011A.1. Before an inquiry is begun, the Secretary of State may give a direction that it be held in private: s 75(2). Where no such direction has been given, the person holding the inquiry may decide to hold it, or any part of it, in private: s 75(3). The Local Government Act 1972 s 250(2)-(5) (powers in relation to local inquiries) (see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies in relation to an inquiry under the Health and Social Care Act 2008 s 75 as it applies in relation to a local inquiry under that provision: s 75(4). The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate, and publication is to be in such manner as the Secretary of State considers appropriate: s 75(5), (6).

8. Information

Where information has been obtained by the Care Quality Commission on terms or in circumstances requiring it to be held in confidence, and the information relates to and identifies an individual, a person is guilty of an offence if the person knowingly or recklessly discloses such information during the lifetime of the individual: Health and Social Care Act 2008 s 76(1), (2). Information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of that information, and other information obtained by the Commission: s 76(5). A person guilty of an offence under s 76 is liable (1) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both; (2) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both: s 76(3). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (not yet in force), the reference in head (2) to 12 months is to be read as a reference to 6 months: Health and Social Care Act 2008 s 76(4). Reference to information obtained or disclosed by the Commission includes information obtained or disclosed by a person authorised by the Commission: s 76(6). It is a defence for a person charged with an offence under s 76 to prove that at the time of the alleged offence any of the following circumstances applied in relation to the disclosure, or the person reasonably believed that any of them so applied: s 77(1). The circumstances are (a) that the disclosure was made in a form in which the individual to whom the information relates is not identified; (b) that the disclosure was made with the consent of that individual; (c) that the information disclosed had previously been lawfully disclosed to the public; (d) that the disclosure was made under or pursuant to regulations under the Health and Social Care (Community Health and Standards) Act 2003 s 113 or 114 (complaints about health care or social services) (see HEALTH SERVICES vol 54 (2008) PARA 596); (e) that the disclosure was made in accordance with any enactment or court order; (f) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual; (g) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment: s 77(2). For the purposes of head (a) information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual

can be identified from a combination of the information, and other information disclosed by the person or by the Commission: s 77(5). It is also a defence for a person charged with an offence under s 76 to prove that the disclosure was made (i) for the purpose of facilitating the exercise of any of the Commission's functions; (ii) in connection with the investigation of a criminal offence (whether or not in the United Kingdom); or (iii) for the purpose of criminal proceedings (whether or not in the United Kingdom): s 77(3). If a person charged with an offence under s 76 relies on a defence in s 77(1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not: s 77(4).

Information obtained by, or documents or records produced to, the Commission in connection with any of its functions may be used by the Commission in connection with any of its other functions: s 78. As to the Commission's functions, see PARA 1011A.1. In the case of information relating to an individual, the Commission may disclose any information obtained in the course of exercising any of its functions if the disclosure is made in a form in which the individual is not identified, or the disclosure is made with the consent of the individual: see s 79(1), (2). For these purposes information disclosed by the Commission is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of the information, and other information disclosed by the Commission: s 79(5). In all cases, whether or not relating to an individual, the Commission may disclose the information if (A) the information has previously been lawfully disclosed to the public; (B) the disclosure is made under or pursuant to regulations under the Health and Social Care (Community Health and Standards) Act 2003 s 113 or 114 (complaints about health care or social services); (C) the disclosure is made in accordance with any enactment or court order; (D) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual; (E) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment; (F) the disclosure is made for the purpose of facilitating the exercise of any of the Commission's functions; (G) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom); or (H) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom): s 79(3). Section 79(2), (3) has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure: s 79(4).

The Commission must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential information: see s 80.

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/2. LOCAL AND CENTRAL AUTHORITIES/1011B. Social services functions of the National Assembly for Wales.

1011B. Social services functions of the National Assembly for Wales.

1. Provision of social services

The National Assembly for Wales has the general function of encouraging improvement in the provision of Welsh local authority social services¹. It may review (1) studies and research undertaken by others in relation to the provision of Welsh local authority social services; (2) the methods used in such studies and research; and (3) the validity of conclusions drawn from such studies and research²; and, where it conducts such a review, it must publish such report as it considers appropriate³.

The Assembly has the function of conducting reviews of, and investigations into, the way in which local authorities in Wales discharge their social services functions⁴. The Assembly may in particular⁵ conduct (a) a review of the overall provision of Welsh local authority social services; (b) a review of the provision of any Welsh local authority social service of a particular description; or (c) a review of, or investigation into, the provision of any Welsh local authority social service by a particular person or persons⁶. Where the Assembly conducts such a review or investigation, it must publish a report⁷.

The Assembly has the function of promoting or undertaking comparative or other studies designed to enable it to make recommendations⁸ (i) for improving economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions; (ii) for improving the management of such local authorities in the discharge of those functions⁹. The Assembly may also promote or undertake studies designed to enable it to prepare reports as to the impact of the operation of any particular statutory provisions on economy, efficiency and effectiveness in the discharge by local authorities in Wales of their social services functions¹⁰. The Assembly has such additional functions in relation to the provision of Welsh local authority social services as (A) correspond to functions conferred on the Care Quality Commission¹¹ and functions relating to the provision of relevant services¹² and assigned to Her Majesty's Chief Inspector of Education, Children's Services and Skills¹³; and (B) are specified by the Assembly in regulations¹⁴.

For the purpose of the exercise by the Assembly of its functions under the provisions above¹⁵, and under regulations¹⁶, the Assembly must be concerned in particular with (aa) the availability of, and access to, the services; (bb) the quality and effectiveness of the services; (cc) the management of the services; (dd) the economy and efficiency of their provision and their value for money; (ee) the availability and quality of information provided to the public about the services; (ff) the need to safeguard and promote the rights and welfare of children; and (gg) the effectiveness of measures taken by local authorities for the purpose specified in head (ff) above¹⁷.

1 Health and Social Care (Community Health and Standards) Act 2003 s 92. See the Commissioner for Older People (Wales) Act 2006; para 1024A.

2 Health and Social Care (Community Health and Standards) Act 2003 s 93(1).

3 Ibid s 93(2).

4 Ibid s 94(1). The Assembly may by regulations require a local authority in Wales to pay a fee to the Assembly in respect of the exercise of the Assembly's function under s 94 in relation to the functions referred to in the Care Standards Act 2000 s 43(3)(a), (b) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS

921, 993), and a fee is to be of such amount, and payable at such time, as may be specified in the regulations, and may, without prejudice to any other method of recovery, be recovered summarily as a civil debt: s 94(6)-(8) (not yet in force).

5 Ie under *ibid* s 94.

6 *Ibid* s 94(2). In such a review, the Assembly may (1) assess performance against criteria; (2) award performance ratings: s 94(3). For these purposes, the Assembly may carry out an inspection of any local authority in Wales, and of any other person providing a Welsh local authority social service: s 94(4).

7 *Ibid* s 94(5).

8 The Assembly must publish or otherwise make available any such recommendations: *ibid* s 95(3)(a).

9 *Ibid* s 95(1). The Assembly must publish or otherwise make available a report on the result of any studies under s 95: s 95(3)(b).

10 *Ibid* s 95(2).

11 Ie under Health and Social Care Act 2008 Pt 1 (ss 1-97) (see PARA 1011A).

12 'Relevant services' means services which immediately before the coming into force of the Education and Inspections Act 2006 Pt 8 Ch 4 (ss 135-142) were English local authority social services for the purposes of the 2003 Act Pt 2 (ss 41-149): s 96(3) (as substituted: see NOTE 14).

13 Ie under the Education and Inspections Act 2006 s 118(4).

14 2003 Act s 96 (substituted by the Education and Inspections Act 2006 Sch 14 para 88; and amended by the Health and Social Care Act 2008 Sch 5 para 42).

15 Ie under the 2003 Act ss 92-95.

16 Ie under *ibid* s 96.

17 *Ibid* s 97.

2. Ancillary powers

A person authorised to do so by the National Assembly for Wales may, if it considers it necessary or expedient for the purposes of its social services functions¹, at any reasonable time enter and inspect any premises owned or controlled by a local authority in Wales, and any premises², other than premises used wholly or mainly as a private dwelling³. A person who proposes to exercise any such power of entry or inspection must if so required produce some duly authenticated document showing his authority to exercise the power⁴.

A person so authorised to enter and inspect premises may, if he considers it necessary or expedient⁵ (1) inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the discharge by the local authority of its social services functions⁶; (2) inspect any other item and remove it from the premises; (3) interview in private any person working at the premises; or any person accommodated or cared for there who consents to be interviewed; and (4) make any other examination into the state and management of the premises and treatment of persons accommodated or cared for there⁷.

Any person who without reasonable excuse obstructs the exercise of any power conferred by the provisions above⁸, or fails to comply with any requirement of them, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale⁹.

The Assembly may at any time require the persons mentioned below to provide it with any information, documents, records (including personal records) or other items which relates or relate to the discharge by a local authority in Wales of its social services functions, and which the Assembly considers it necessary or expedient to have for the purpose of any of its social services functions¹⁰. Those persons are the local authority, a person providing a Welsh local authority social service for the authority, or any Welsh NHS body or cross-border SHA¹¹. The

power¹² to require the provision of information includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form¹³. Any person who without reasonable excuse fails to comply with any requirement¹⁴ is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale¹⁵.

The Assembly may by regulations make provision requiring prescribed persons to provide to the Assembly, or to persons authorised by it, an explanation of any documents, records or items inspected, copied or produced, any information provided¹⁶, or any matters which are the subject of the exercise of any functions of the Assembly under its social services functions¹⁷, in cases where the Assembly considers the explanation necessary or expedient for the purposes of those functions¹⁸. Any person who without reasonable excuse fails to comply with any requirement¹⁹ is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale²⁰.

As soon as possible after the end of each financial year of the Assembly, it must make and publish a report or reports on what it has found during the year in the course of exercising its social services functions (other than any function of making regulations), and the way in which it has during the year exercised those functions²¹. The Welsh Ministers may use any information they obtain, or documents produced to them, in the course of exercising their health and social care functions under the Health and Social Care (Community Health Standards) Act 2003²², and certain other functions²³, for the purposes of exercising any other of those functions; for these purposes references to functions do not include functions of making regulations²⁴.

1 Ie under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 6 (ss 92-101). The functions under Pt 2 Ch 6 also apply to children's services authorities in Wales (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 192 et seq): Children Act 2004 s 30(1).

2 Ie premises which are used, or proposed to be used, by any person in connection with the provision of a Welsh local authority social service; or which the Assembly reasonably believes to be so used, or proposed to be so used: Health and Social Care (Community Health and Standards) Act 2003 s 98(2).

3 Ibid s 98(1). A person so authorised to enter and inspect premises may (1) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under s 98 or 99; (2) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers: s 99(4).

4 Ibid s 98(3).

5 Ie for the purposes of ibid Pt 2 Ch 6.

6 The power under head (1) includes power to require any person holding or accountable for documents or records kept on the premises to produce them, and in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away: ibid s 98(2).

A person authorised by virtue of head (1) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question: s 98(3).

7 Ibid s 99(1).

8 Ie ibid s 98 or 99.

9 Ibid s 99(5). As to the standard scale, see PARA 1014 NOTE 11. As to offences by bodies corporate see s 146.

10 Ibid s 100(1).

11 Ibid s 100(2) (amended by the Health and Social Care Act 2008 Sch 5 para 43).

12 Ie in the 2003 Act s 100(1).

13 Ibid s 100(3).

- 14 Ie imposed by virtue of ibid s 100.
- 15 Ibid s 100(4). As to offences by bodies corporate see s 146.
- 16 Ie any documents, records or items inspected, copied or produced, or any information provided under ibid ss 98-100.
- 17 Ie under ibid Pt 2 Ch 6.
- 18 Ibid s 101(1). Regulations under s 101(1) may require explanations to be provided at such times and places as may be specified by the Assembly: s 101(2). See the National Assembly for Wales (Social Services Explanations) Regulations 2005, SI 2005/1510.
- 19 Ie imposed by virtue of the 2003 Act s 101.
- 20 Ibid s 101(3). As to offences by bodies corporate see s 146.
- 21 Ibid s 142.
- 22 Ie under ibid Pt 2 Ch 4 (ss 70-75) (see HEALTH SERVICES vol 54 (2008) PARAS 593-594) or Pt 2 Ch 6.
- 23 Ie their functions exercisable by virtue of the 2000 Act s 5(1)(b) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 984) or 8(1)-(3) (see PARA 1001B), the Children Act 1989 s 80 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 156), their functions under the Mental Health Act 1983 in their capacity as the regulatory authority (within the meaning of that Act), and any functions exercisable by them by virtue of the Mental Capacity Act 2005 Sch A1 para 163(1).
- 24 2003 Act s 143 (substituted by the Health and Social Care Act 2008 Sch 5 para 48).

UPDATE

1001-1011 Social services provision ... Powers of Secretary of State in relation to exercise of social services functions by local authorities

The Care Quality Commission has the general function of protecting and promoting the health, safety and welfare of people who use health and social care services in England: see PARA 1011A. The Commission is not, however, responsible for any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills: see PARA 1001A. For corresponding provision in relation to Wales, see PARAS 1001B, 1011B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1012. Community care services.

3. COMMUNITY CARE SERVICES

(1) IN GENERAL

1012. Community care services.

Community care services means services which a local authority¹ may provide or arrange to be provided under any of the relevant statutory provisions².

A social fund payment may be awarded to promote community care³.

¹ As to the meaning of 'local authority' see PARA 1005 ante.

² National Health Service and Community Care Act 1990 s 46(3). The relevant statutory provisions are (1) the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post), which replaces the former poor law (see s 1 (amended by the Supplementary Benefit Act 1966 s 39(3), Sch 8)); (2) the Health Services and Public Health Act 1968 s 45 (as amended) (see PARA 1024 post); (3) the National Health Service Act 1977 s 21, Sch 8 (both as amended) (see PARAS 1025-1027 post); and (4) the Mental Health Act 1983 s 117 (as amended) (see PARA 1028 post): see the National Health Service and Community Care Act 1990 s 46(3).

³ See PARA 235 ante.

UPDATE

1012 Community care services

TEXT AND NOTES--For provision as to the exclusion of nursing care from community care services see PARA 1012A.

NOTE 2--Definition of 'community care services' in 1990 Act s 46(3) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 129.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1012A. Exclusion of nursing care from community care services.

1012A. Exclusion of nursing care from community care services.

The following provisions are in force in relation to England (SI 2001/3294, SI 2003/850) and partly in force in relation to Wales (SI 2001/3807).

Nothing in the enactments relating to the provision of community care services¹ authorises or requires a local authority², in or in connection with the provision of any such services³, to (1) provide for any person, or (2) arrange for any person to be provided with, nursing care by a registered nurse⁴.

1 In the Health and Social Care Act 2001 Pt 4 (ss 49-59) 'community care services' in relation to England or Wales, has the meaning given by the National Health Service and Community Care Act 1990 s 46(3) (local authority plans for community care services: see PARA 1012): Health and Social Care Act 2001 s 59(1).

2 In ibid Pt 4 'local authority' in relation to England or Wales, has the meaning given by the National Health Service and Community Care Act 1990 s 46(3) (see PARA 1005): Health and Social Care Act 2001 s 59(1).

3 In ibid Pt 4 any reference (however expressed) to services provided by a local authority includes services which the authority arrange to provide, where they have power to do so: s 59(3).

4 Ibid s 49(1). In s 49(1) 'nursing care by a registered nurse' means any services provided by a registered nurse and involving (1) the provision of care, or (2) the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse: s 49(2).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1013. Community care plans.

1013. Community care plans.

The National Health Service and Community Care Act 1990¹ introduced the requirement that each local authority² should prepare and publish a plan for the provision of community care services³ in its area⁴. Each local authority must keep the plan, and any further plans prepared under these provisions, under review⁵; and, at such intervals as the Secretary of State⁶ may direct, must prepare and publish modifications to the current plan, or if the case requires, prepare and publish a new plan⁷.

In carrying out these functions relating to plans, a local authority must consult the following: (1) any health authority, the whole or any part of whose area lies within the area of the local authority⁸; (2) every local housing authority⁹ whose area is within the area of the local authority¹⁰; (3) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers¹¹ who within that area provide care to persons for whom, in the exercise of its social services functions, the local authority has a power or a duty to provide a service¹²; (4) such voluntary housing agencies and other bodies as appear to the local authority to provide housing or community care services in its area¹³; and (5) such other persons as the Secretary of State may direct¹⁴.

1 See the National Health Service and Community Care Act 1990 s 46(1)(a).

2 As to the meaning of 'local authority' see PARA 1005 ante.

Provision is made for the transfer of staff from a National Health Service body to a local authority: see *ibid* s 49 (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt II paras 65, 82; and the Employment Rights Act 1996 s 240, Sch 1 para 45(1), (3)). 'National Health Service body' means a health authority or special health authority or a NHS trust (see HEALTH SERVICES vol 54 (2008) PARA 75 et seq): s 49(4)(b) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt II paras 65, 82).

3 For the meaning of 'community care services' see PARA 1012 ante.

4 National Health Service and Community Care Act 1990 s 46(1)(a). The plan was to be prepared and published by 1 April 1992: see s 46(1)(a); and the Community Care Plans Direction 1991 para 1(a).

5 National Health Service and Community Care Act 1990 s 46(1)(b).

6 As to the Secretary of State see PARA 1001 note 6 ante.

7 National Health Service and Community Care Act 1990 s 46(1)(c). If the Secretary of State is dissatisfied with the contents of a community care plan he may issue a direction under the Local Authority Social Services Act 1970 s 7A (as added): see PARA 1011 ante.

8 National Health Service and Community Care Act 1990 s 46(2)(a) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt II paras 65, 80).

9 *Ie* within the meaning of the Housing Act 1985: see HOUSING.

10 National Health Service and Community Care Act 1990 s 46(2)(c). The duty to consult a local housing authority applies only in so far as any proposed plan, review or modifications of a plan may affect or be affected by the provision or availability of housing and the local authority is not itself a local housing authority: see s 46(2)(c).

11 'Private carer' means a person who is not employed to provide the care in question by any body in the exercise of its function under any enactment: *ibid* s 46(3).

12 Ibid s 46(2)(d).

13 Ibid s 46(2)(e).

14 Ibid s 46(2)(f). The Secretary of State has directed that local authorities must consult any representative organisation (including any incorporated or unincorporated body of persons) which represents providers in the authority's area with whom the authority may arrange to provide community care services where that organisation notifies the local authority in writing of its wish to be consulted in respect of the authority's community care plans: Community Care Plans (Consultation) Directions 1993 para 2. Each local authority must include in its community care plans details of how it proposes to consult these bodies: Community Care Plans (Consultation) Directions 1993 para 3.

UPDATE

1013 Community care plans

NOTES 1, 4-14--National Health Service and Community Care Act 1990 s 46(1), (2) disapplied: Community Care Plans (Disapplication) (England) Order 2003, SI 2003/1716.

NOTE 2--Definition of 'National Health Service body' now includes a strategic health authority (see HEALTH SERVICES vol 54 (2008) PARA 94 et seq): 1990 Act s 49(4)(b) (amended by National Health Service Reform and Health Care Professions Act 2002 Sch 1 para 44).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1014. Inspection of premises used for community care services.

1014. Inspection of premises used for community care services.

Any person authorised by the Secretary of State¹ may at any reasonable time enter and inspect any premises² in which community care services³ are or are proposed to be provided by a local authority⁴, whether directly or under arrangements made with another person⁵. Any person inspecting any premises under these provisions may (1) make such examination into the state and management of the premises, and the facilities and services provided there, as he thinks fit; (2) inspect any records⁶ relating to the premises, or to any person for whom community care services have been or are to be provided there; and (3) require the owner of, or any person employed in, the premises to furnish him with such information as he may request⁷.

Any person inspecting any premises under these provisions may (a) interview any person residing there in private for the purpose of investigating any complaint as to those premises or the community care services provided there, or if he has reason to believe that the community care services being provided there for that person are not satisfactory; and (b) examine any such person in private⁸.

No person may exercise the power to inspect records so as to inspect medical records, unless he is a registered medical practitioner and the records relate to medical treatment given at the premises in question; nor may any person exercise the power to examine a person unless he is a registered medical practitioner⁹.

Any person exercising the power of entry must, if so required, produce some duly authenticated document showing his authority to do so¹⁰. Any person who intentionally obstructs another in the exercise of that power is guilty of an offence¹¹.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 Ie other than premises in respect of which any person is registered under the Registered Homes Act 1984 (repealed): see PARA 1042 et seq post. As to inspection of residential care homes see PARA 1059 post.

3 For the meaning of 'community care services' see PARA 1012 ante.

4 As to the meaning of 'local authority' see PARA 1005 ante.

5 National Health Service and Community Care Act 1990 s 48(1).

6 Ie any records in whatever form they are held: see *ibid* s 48(2). Any person exercising the power to inspect records (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and (2) may require reasonable assistance from the person by whom or on whose behalf the computer is or has been so used, or any person having charge of or otherwise concerned with the operation of the computer, apparatus or material: see s 48(3).

7 *Ibid* s 48(2).

8 *Ibid* s 48(4).

9 *Ibid* s 48(5). As to the meaning of 'registered medical practitioner' see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 4; HEALTH SERVICES vol 54 (2008) PARA 57.

10 *Ibid* s 48(6).

11 Ibid s 48(7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 48(7). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

UPDATE

1014 Inspection of premises used for community care services

NOTE 2--Registered Homes Act 1984 replaced by Care Standards Act 2000.

NOTE 11--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1015. Assessment of needs for community care services.

1015. Assessment of needs for community care services.

Where it appears to a local authority¹ that any person for whom it may provide or arrange for the provision of community care services² may be in need of any such services, the authority must (1) carry out an assessment of that person's needs for those services³; and (2) having regard to the results of that assessment, decide whether his needs call for the provision by it of any such services⁴.

If at any time during the assessment it appears to the local authority that the person whose needs are being assessed is a disabled person⁵, the authority must proceed to decide whether that person's needs call for the provision of services under the Chronically Sick and Disabled Persons Act 1970⁶ without his requesting it to do so⁷. The local authority must inform the disabled person that it will be deciding whether he needs any such services and of his rights under the Disabled Persons (Services, Consultation and Representation) Act 1986⁸.

If at any time during the assessment of a person's needs for community care services, it appears to the local authority (a) that there may be a need for the provision to that person of any services under the National Health Service Act 1977 by such health authority as may be determined in accordance with regulations; or (b) that there may be a need for the provision to that person of any services which fall within the functions of a local housing authority⁹ which is not the local authority carrying out the assessment, the local authority must notify that health authority or local housing authority and invite it to assist, to such extent as is reasonable in the circumstances, in the making of the assessment¹⁰. In making its decision as to the provision of the services needed for the person in question, the local authority must take into account any services likely to be made available for him by the health authority or local housing authority¹¹.

The Secretary of State¹² may give directions as to the manner in which an assessment is to be carried out or the form it is to take, but subject to any such directions the assessment is to be carried out as the local authority considers appropriate¹³.

A local authority may temporarily provide or arrange for the provision of community care services for any person without carrying out a prior assessment of his needs if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency¹⁴; but if such services have been provided temporarily for any person as a matter of urgency, an assessment of his needs must be made as soon as practicable¹⁵.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 For the meaning of 'community care services' see PARA 1012 ante.

3 National Health Service and Community Care Act 1990 s 47(1)(a).

4 Ibid s 47(1)(b).

5 For the meaning of 'disabled person' see PARA 1016 note 11 post (definition applied by ibid s 47(8)). In certain circumstances, when deciding whether a disabled person's needs call for the provision of services, the local authority must have regard to the abilities of that person's carer: see PARA 1016 post.

6 Ie the Chronically Sick and Disabled Persons Act 1970 s 2(1) (as amended) (see PARA 1023 post).

7 Ie under the Disabled Persons (Services, Consultation and Representation) Act 1986 s 4 (see PARA 1023 note 4 post): see the National Health Service and Community Care Act 1990 s 47(2)(a).

8 Ibid s 47(2)(b). As to rights under the Disabled Persons (Services, Consultation and Representation) Act 1986 see note 13 infra; and PARAS 1016 note 13, 1023 note 4 post.

9 le within the meaning of the Housing Act 1985: see HOUSING.

10 National Health Service and Community Care Act 1990 s 47(3) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt II paras 65, 81).

11 National Health Service and Community Care Act 1990 s 47(3) (as amended: see note 10 supra).

12 As to the Secretary of State see PARA 1001 note 6 ante.

13 National Health Service and Community Care Act 1990 s 47(4). In determining what is appropriate the local authority should have regard to government guidance on the assessment process: *R v Islington London Borough Council, ex p Rixon* (1996) 32 BMLR 136.

The National Health Service and Community Care Act 1990 s 47 (as amended) is without prejudice to the Disabled Persons (Services, Consultation and Representation) Act 1986 s 3: National Health Service and Community Care Act 1990 s 47(7). As from a day to be appointed, the Disabled Persons (Services, Consultation and Representation) Act 1986 s 3 provides that, where it falls to a local authority to decide whether the needs of a disabled person call for the provision of statutory services, the local authority must give the disabled person or his authorised representative an opportunity to make representations and, if requested, must supply the disabled person or his authorised representative with a written statement explaining its decision. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'statutory services' see PARA 1072 note 23 post. As to authorised representatives see PARA 1023 note 4 post.

14 National Health Service and Community Care Act 1990 s 47(5).

15 Ibid s 47(6).

UPDATE

1015 Assessment of needs for community care services

NOTES 3, 4--The court is not the appropriate organ to prescribe the degree of detail to be contained in a care plan drawn up by a local authority in accordance with the 1990 Act s 47(1): *R (on the application of Lloyd) v Barking and Dagenham LBC* [2002] 1 FCR 136, CA.

NOTE 4--In making a service provision decision pursuant to the 1990 Act s 47(1)(b), a local authority must address the question of the assessed person's long-term future: *R v Sutton LBC, ex p Tucker* (1996) 40 BMLR 137. While a local authority is obliged to provide certain community care services, its duty is not absolute, and can be considered discharged if an applicant persistently refuses to co-operate: *R v Kensington and Chelsea LBC, ex p Kujtim* (1999) Times, 5 August, CA. The 1990 Act s 47 does not require a local authority to monitor the after-care needs of a mental patient while he is still being detained: *R (on the application of B) v Camden LBC* [2005] EWHC 1366 (Admin), [2006] LGR 19.

TEXT AND NOTE 10--1990 Act s 47(3) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 130.

NOTE 11--See also *R v Lambeth LBC, ex p A1*; *R v Lambeth LBC, ex p A2* (1997) 30 HLR 933, CA (judge may exercise discretion to defer decision as to whether further assessments are required until after family has been re-housed).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1016. Assessment of carer's ability to provide care.

1016. Assessment of carer's ability to provide care.

Where a local authority¹ carries out an assessment of the needs of a person ('the relevant person') for community care services² and where an individual ('the carer') provides or intends to provide a substantial amount of care on a regular basis for the relevant person, the carer may request the local authority to carry out an assessment of the carer's ability to provide and to continue to provide care for the relevant person, before it makes its decision as to whether the needs of the relevant person call for the provision of any services³. If such a request is made, the local authority must carry out such an assessment and must take into account the results of that assessment in making that decision⁴.

Where a local authority assesses the needs of a disabled child⁵ and an individual ('the carer') provides or intends to provide a substantial amount of care on a regular basis for the disabled child, the carer may request the local authority to carry out an assessment of the carer's ability to provide and to continue to provide care for the disabled child, before it makes its decision as to whether the needs of the disabled child call for the provision of any services; and, if he makes such a request, the local authority must carry out an assessment and take into account the results of that assessment in making that decision⁶.

The Secretary of State⁷ may give directions as to the manner in which an assessment⁸ is to be carried out or the form it is to take; but, subject to any such directions, it must be carried out in such manner and take such form as the local authority considers appropriate⁹.

No request for an assessment may be made by an individual who provides or will provide the care in question by virtue of a contract of employment or other contract with any person or as a volunteer for a voluntary organisation¹⁰.

Where a disabled person¹¹ is living at home and receiving a substantial amount of care on a regular basis from another person who is not a person employed to provide such care by any body in the exercise of its functions under any enactment, and it falls to a local authority to decide whether the disabled person's needs call for the provision by it of any services for him under any of the welfare enactments¹², the local authority must, in deciding that question, have regard to the ability of that other person to continue to provide such care on a regular basis¹³.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 I.e. an assessment under the National Health Service and Community Care Act 1990 s 47(1)(a): see PARA 1015 ante. For the meaning of 'community care services' see PARA 1012 ante (definition applied by the Carers (Recognition and Services) Act 1995 s 1(6)).

3 Ibid s 1(1).

4 Ibid s 1(1). Where an assessment of ability is made in respect of an individual who provides the care in question for a disabled person, the Disabled Persons (Services, Consultation and Representation) Act 1986 s 8 (see the text and note 13 infra) does not apply: Carers (Recognition and Services) Act 1995 s 1(5)(a). 'Disabled person' means a person to whom the National Assistance Act 1948 s 29 (as amended) (see PARA 1020 post) applies: Carers (Recognition and Services) Act 1995 s 1(6).

5 I.e. for the purposes of the Children Act 1989 Pt III (ss 17-30) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 844 et seq) or the Chronically Sick and Disabled Persons Act 1970 s 2 (as amended) (see PARA 1023 post). 'Disabled child' means a child who is disabled within the meaning of the Children Act 1989 Pt III (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 851): Carers (Services and Recognition) Act 1995 s 1(6). 'Child' means a person under the age of 18: s 1(6).

6 Ibid s 1(2). Where an assessment is made under s 1(2), the Disabled Persons (Services, Consultation and Representation) Act 1986 s 8 (see the text and note 13 infra) does not apply: Carers (Recognition and Services) Act 1995 s 1(5).

7 As to the Secretary of State see PARA 1001 note 6 ante.

8 Ie an assessment under the Carers (Recognition and Services) Act 1995 s 1(1) or s 1(2).

9 Ibid s 1(4). No directions have been given by the Secretary of State, but, in deciding what is appropriate, the local authority should have regard to government guidance on the assessment process.

Any increase attributable to the Carers (Recognition and Services) Act 1995 in the sums payable out of money provided by Parliament under any other enactment must be paid out of money so provided: s 4.

10 Ibid s 1(3). For the meaning of 'voluntary organisation' see PARA 1022 note 4 post (definition applied by s 1(6)).

11 'Disabled person' means, in the case of a person aged 18 or over, a person to whom the National Assistance Act 1948 s 29 (as amended) (see PARA 1020 post) applies and, in the case of a person under the age of 18, a person who is disabled within the meaning of the Children Act 1989 Pt III (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 851): Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1) (amended by the Children Act 1989 s 108(5), Sch 13 para 61).

12 Ie the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post), the Chronically Sick and Disabled Persons Act 1970 s 2 (see PARA 1023 post) and, in relation to England and Wales, the National Health Service Act 1977 s 21 (as amended), Sch 8 (as amended) (see PARAS 1025-1027 post) and the Children Act 1989 Pt III (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 844 et seq): Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1) (amended by the Children Act 1989 Sch 13 para 61).

13 Disabled Persons (Services, Consultation and Representation) Act 1986 s 8(1). As from a day to be appointed, provision is made that where the other person who provides care is unable to communicate, or be communicated with, the local authority must provide such services as in its opinion are necessary to ensure that any such incapacity does not prevent the authority from being properly informed as to the ability of that person to continue to provide care; and, in determining whether it is required to provide such services, the authority must have regard to the views of that person: see s 8(2), (3). At the date at which this volume states the law, no such day had been appointed.

UPDATE

1016 Assessment of carer's ability to provide care

TEXT AND NOTES 1-6--For the purposes of an assessment under the Carers (Recognition and Services) Act 1995 s 1(1) or (2), the local authority may take into account, so far as it considers it to be material, an assessment under the Carers and Disabled Children Act 2000 s 1 (see PARA 1019A) or 6 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 854): 1995 Act s 1(2A) (added by the 2000 Act s 4(1)).

An assessment under the 1995 Act s 1(1) or (2) must include consideration of whether the carer works or wishes to work, is undertaking or wishes to undertake, education, training, or any leisure activity: s 1(2C) (added by the Carers (Equal Opportunities) Act 2004 s 2(1)).

In any case where a local authority is carrying out an assessment under the 1995 Act s 1(1)(a) or (2)(a) in relation to the relevant person or a disabled child and it appears to the local authority that an individual may be entitled to request (but has not requested) an assessment of his ability to provide and to continue to provide care for the relevant person or the disabled child, the local authority must inform the individual that he may be so entitled before it makes its decision as to the needs of the relevant person or the disabled child: s 1(2B) (added by the 2004 Act s 1(1)).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1017. Information relating to welfare arrangements.

1017. Information relating to welfare arrangements.

It is the duty of every local authority¹ having functions under the National Assistance Act 1948² to inform itself of the number of persons to whom that provision applies within its area and of the need for the making by the authority of welfare arrangements³ for such persons⁴.

Every such local authority must cause to be published, at such times and in such manner as it considers appropriate, general information as to the services provided under welfare arrangements which are for the time being available in its area⁵. It must also ensure that any person⁶ who uses any of those services is informed of (1) any other service provided by the authority (whether under any such arrangements or not) which in the authority's opinion is relevant to his needs; and (2) any service provided by any other authority or organisation which in the opinion of the authority is relevant to his needs and of which particulars are in the authority's possession⁷.

The Secretary of State⁸ must take steps to obtain from local authorities having functions under Part III of the National Assistance Act 1948⁹ information as to the number of persons under the age of 65 appearing to the authority in question to be persons to whom this provision applies¹⁰ for whom residential accommodation is from time to time provided¹¹ at any premises in a part of those premises in which such accommodation is provided for persons over that age¹².

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Ie the National Assistance Act 1948 s 29 (as amended): see PARA 1020 et seq post.

3 Ie arrangements under ibid s 29 (as amended) (see PARAS 1020-1021 post).

4 Chronically Sick and Disabled Persons Act 1970 s 1(1). The Chronically Sick and Disabled Persons Act 1970 applies with respect to disabled children in relation to whom a local authority has functions under the Children Act 1989 Pt III (ss 17-30) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 844 et seq) as it applies in relation to persons to whom the National Assistance Act 1948 s 29 (as amended) (see PARA 1020 post) applies: Chronically Sick and Disabled Persons Act 1970 s 28A (added by the Children Act 1989 s 108(5), Sch 13 para 27).

5 Chronically Sick and Disabled Persons Act 1970 s 1(2)(a).

6 Ie any person to whom the National Assistance Act 1948 s 29 (as amended) applies: see PARA 1020 post. See also note 4 supra.

7 Chronically Sick and Disabled Persons Act 1970 s 1(2)(b) (amended by the Disabled Persons (Services, Consultation and Representation) Act 1986 s 9). For guidance on the implications and operation of the Chronically Sick and Disabled Persons Act 1970 s 1 (as amended) see Department of Health and Social Security Circular No 45/71.

8 As to the Secretary of State see PARA 1001 note 6 ante.

9 Ie the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1020 et seq post).

10 See note 6 supra.

11 Ie under the National Assistance Act 1948 s 21(1)(a) (as amended) (see PARA 1029 post) or s 26(1) (as substituted) (see PARA 1033 post).

12 Chronically Sick and Disabled Persons Act 1970 s 18(1). Every such local authority must provide the Secretary of State in such form and at such times as he may direct with such information as he may from time

to time require; and in each year the Secretary of State must lay this information before each House of Parliament: see s 18(3).

As to the separation of younger patients from older patients see PARA 1065 post.

UPDATE

1017 Information relating to welfare arrangements

TEXT AND NOTES 8-12--1970 Act s 18(1), (3) repealed: Care Standards Act 2000 Sch 6.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1018. Direct payments.

1018. Direct payments.

Where a local authority¹ has decided² that the needs of a person call for the provision of any community care services³ and the person is of specified⁴ description, the local authority may, if the person consents, make a payment to him of such amount as the local authority thinks fit, in respect of his securing the provision of any of the services for which the local authority has decided his needs call⁵. Such a payment is subject to the condition that the person to whom it is made must not secure the provision of the service to which it relates by a person who is of a specified⁶ description⁷.

The Secretary of State may by regulations provide that the power to make such payments is not to be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations⁸.

If a local authority makes a payment⁹ at a rate below its estimate of the reasonable cost of securing the provision of the service concerned¹⁰, and the payee satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference, the authority must so adjust the payment as to avoid there being a greater difference than that which appears to the authority to be reasonably practicable for him to make up¹¹.

If a local authority which makes a payment¹² is not satisfied, in relation to the whole or any part of the payment that (1) it has been used to secure the provision of the service to which it relates; or (2) any condition¹³ has not been met in relation to its use, the local authority may require the payment or, as the case may be, the part of the payment to be repaid¹⁴.

The fact that a local authority makes a payment¹⁵ does not affect its functions with respect to the provision under the relevant community care enactment¹⁶ of the service to which the payment relates¹⁷; except that, where a local authority makes such a payment, it is not under any obligation to the payee with respect to the provision under the relevant community care enactment of the service to which the payment relates as long as it is satisfied that the need which calls for the provision of the service will be met by virtue of the payee's own arrangements¹⁸.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 I.e. under the National Health Service and Community Care Act 1990 s 47 (as amended) (see PARA 1015 ante).

3 For the meaning of 'community care services' see PARA 1012 ante (definition applied by the Community Care (Direct Payments) Act 1996 s 1(9)).

4 I.e. specified by regulations made by the Secretary of State for these purposes: see *ibid* s 1(1)(b); and the Community Care (Direct Payments) Regulations 1997, SI 1997/734, reg 2. As to the Secretary of State see PARA 1001 note 6 ante. Regulations under the Community Care (Direct Payments) Act 1996 s 1 may make different provision for different cases, and include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit: s 1(7). The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(8).

5 *Ibid* s 1(1). As to the application of the Community Care (Direct Payments) Act 1996 to Northern Ireland and the Isles of Scilly see ss 6, 7; and the Isles of Scilly (Direct Payments Act) Order 1997, SI 1997/759.

6 I.e. specified by regulations made by the Secretary of State for these purposes: see the Community Care (Direct Payments) Act 1996 s 1(4); and the Community Care (Direct Payments) Regulations 1997, SI 1997/734, reg 3.

7 Community Care (Direct Payments) Act 1996 s 1(4).

8 Ibid s 1(5); and see the Community Care (Direct Payments) Regulations 1997, SI 1997/734, reg 4.

9 Ie under the Community Care (Direct Payments) Act 1996 s 1(1).

10 In the case of a service which, apart from these provisions, would be provided under the Mental Health Act 1983 s 117 (as amended) (see PARA 1028 post), a local authority must not pay under the Community Care (Direct Payments) Act 1996 s 1(1) at a rate below its estimate of the reasonable cost of securing the provision of the service: s 1(3).

11 Ibid s 1(2).

12 Ie under ibid s 1(1).

13 Ie the condition imposed by ibid s 1(4) (see the text and note 7 supra), or any other condition properly imposed by the local authority: see ibid s 1(6)(b).

14 Ibid s 1(6).

15 Ie under ibid s 1(1).

16 Ie the enactment under which the service would fall to be provided apart from the Community Care (Direct Payments) Act 1996: s 2(3).

17 Ibid s 2(1).

18 Ibid s 2(2).

UPDATE

1018 Direct payments

TEXT AND NOTES--SI 1997/734 replaced: Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003, SI 2003/762 (see PARA 1018A); Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004, SI 2004/1748 (see PARA 1018A).

As to the regulation-making powers of the Secretary of State concerning direct payments see PARA 1018A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1018A. Direct payments: regulation-making powers.

1018A. Direct payments: regulation-making powers.

The following provisions are in force in relation to England: SI 2003/850, SI 2009/2567.

Regulations may make provision for and in connection with requiring or authorising the responsible authority¹ in the case of a person of a prescribed² description³ to make, with that person's consent, such payments to him as it may determine in accordance with the regulations⁴. Regulations may also make provision for and in connection with requiring or authorising the responsible authority in the case of a person ('P') of a prescribed description⁵ to make, with the requisite consent⁶, such payments as the authority may determine in accordance with the regulations to a suitable person⁷ other than P in respect of the other person's securing the provision for P of a particular community care service⁸. Regulations under these provisions may, in particular, make provision (1) specifying circumstances in which the responsible authority is not required or authorised to make any payments under the regulations to a person or in respect of a person⁹; (2) for any payments required or authorised by the regulations to be made to a person by the responsible authority ('direct payments') to be made to that person ('the payee') as gross payments¹⁰ or alternatively as net payments¹¹; (3) for the responsible authority to make¹² such determination as to (a) the payee's means in the case of direct payments under the above provisions¹³ the means of the person ('the beneficiary') in respect of whom the payments are required or authorised to be made, and (b) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed; (4) as to the conditions falling to be complied with by the payee in the case of direct payments under the above provisions¹⁴ which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed)¹⁵; (5) specifying circumstances in which the responsible authority (a) may or must terminate the making of direct payments, (b) may require repayment (whether by the payee in the case of direct payments under the above provisions or otherwise) of the whole or part of the direct payments; (6) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority; (7) displacing functions or obligations of the responsible authority¹⁶ only to such extent, and subject to such conditions, as may be prescribed; (8) authorising direct payments to be made to any prescribed person on behalf of the payee; (9) as to matters to which the responsible authority must, or may, have regard when making a decision for the purposes of a provision of the regulations; (10) as to steps which the responsible authority must, or may, take before, or after, the authority makes a decision for the purposes of a provision of the regulations; (11) specifying circumstances in which a person who lacked capacity to consent to the making of direct payments¹⁷ but no longer does so (whether because of fluctuating capacity, or regaining or gaining of capacity) is to be treated, or may be treated, as lacking capacity for the purposes of the above provisions or for purposes of regulations under the above provisions¹⁸.

1 For the meaning of 'responsible authority' see NOTE 3.

2 In the Health and Social Care Act 2001 s 57 'prescribed' means specified in or determined in accordance with regulations under s 57: s 57(8).

3 Ie who falls within ibid s 57(2). A person falls within s 57(2) if a local authority ('the responsible authority') has decided (1) under the National Health Service and Community Care Act 1990 s 47 (assessment by local authorities of needs for community care services: see PARA 1015) that his needs call for the provision by it of a

particular community care service (within the meaning of s 46 (see PARA 1013), or (2) under the Carers and Disabled Children Act 2000 s 2(1) (services for carers: see PARA 1019A) to provide him with a particular service under the Carers and Disabled Children Act 2000: Health and Social Care Act 2001 s 57(2).

4 In respect of his securing the provision of the service mentioned in *ibid* s 57(2)(a) or (b) (see heads (1), (2)): s 57(1). As to regulations under the Health and Social Care Act 2001 generally see s 64.

See the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003, SI 2003/762 (amended by SI 2005/2114); and the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004, SI 2004/1748 (amended by SI 2005/3302, SI 2006/2840).

A panel must provide reasons for its decision which must be underpinned by an evidential base: *R (on the application of Savva) v Royal Borough of Kensington and Chelsea* [2010] EWHC 414 (Admin), [2010] All ER (D) 118 (Mar).

5 *Ie* who falls within the Health and Social Care Act 2001 s 57(2)(a) (see NOTE 3 head (1)), and who falls within s 57(5A) or is reasonably believed by the authority to fall within that provision. A person falls within s 57(5A) if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, to consent to the making of direct payments: s 57(5A) (s 57(5A)-(5C) added by the Health and Social Care Act 2008 s 146(6)).

6 For these purposes, 'the requisite consent' means (1) the consent of the other person; and (2) where the other person is not a surrogate of P but there is at least one person who is a surrogate of P, the consent also of a surrogate of P: Health and Social Care Act 2001 s 57(1B) (s 57(1A)-(1C) added by the Health and Social Care Act 2008 s 146(2)). 'Surrogate', in relation to a person, means a deputy appointed for the person by the Court of Protection under the Mental Capacity Act 2005 s 16(2)(b), or a donee of a lasting power of attorney created by the person, whose powers, as deputy or donee, consist of or include such powers as may be prescribed: Health and Social Care Act 2001 s 57(5C) (as added: see NOTE 5).

7 For these purposes a person (whether or not an individual) is 'suitable' if (1) that person is a representative of P; (2) that person is not a representative of P (or there is no-one who is a representative of P), but a surrogate of P, and the responsible authority, consider that person to be a suitable person to receive the payments for the purpose of securing provision for P of the service concerned; or (3) that person is not a representative of P (or there is no one who is a representative of P), and there is no one who is a surrogate of P, but the responsible authority considers that person to be a suitable person to receive the payments for that purpose: *ibid* s 57(1C) (as added: see NOTE 6).

8 *Ibid* s 57(1A) (as added: see NOTE 6). The reference to a particular community care service is to a service mentioned in s 57(2)(a) (see NOTE 3 head (1)).

9 Whether those circumstances relate to the person in question or to the particular service mentioned in the Health and Social Care Act 2001 s 57(2)(a) or (b) (see NOTE 4 heads (1), (2)).

Regulations made for the purposes of head (1) in the text may provide that direct payments must not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period: s 57(7).

10 For the purposes of head (2) in the text 'gross payments' means payments (1) which are made at such a rate as the authority estimates to be equivalent to the reasonable cost of securing the provision of the service concerned; but (2) which may be made subject to the condition that the payee in the case of direct payments under *ibid* s 57(1), or the beneficiary in the case of direct payments under s 57(1A), pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations: *ibid* s 57(4) (amended by the Health and Social Care Act 2008 s 146(4)).

Regulations under the Health and Social Care Act 2001 s 57 must provide that, where direct payments are made in respect of a service which, apart from the regulations, would be provided under the Mental Health Act 1983 s 117 (see PARA 1028) (a) the payments must be made at the rate mentioned in head (1); and (b) head (2) does not apply: Health and Social Care Act 2001 s 57(6).

11 For the purposes of head (2) in the text 'net payments' means payments (1) which are made on the basis that the payee will himself in the case of direct payments under *ibid* s 57(1), or the beneficiary will in the case of direct payments under s 57(1A), pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and (2) which are accordingly made at such a rate below that mentioned in *ibid* s 57(4)(a) (see NOTE 6 head (1)) as reflects any such contribution by the payee or, as the case may be, the beneficiary: s 57(5) (amended by the Health and Social Care Act 2008 s 146(5)).

12 *Ie* for the purposes of the Health and Social Care Act 2001 s 57(4) or (5).

13 *Ie* under *ibid* s 57(1) or s 57(1A).

14 le in the case of direct payments under *ibid* s 57(1), or by the payee or by the beneficiary in the case of direct payments under s 57(1A).

15 For these purposes, the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions in relation to (1) the securing of the provision of the service concerned; (2) the provider of the service; (3) the person to whom payments are made in respect of the provision of the service; or (4) the provision of the service: *ibid* s 57(7A) (added by the Health and Social Care Act 2008 s 146(7)).

16 le with respect to the provision of the service mentioned in the Health and Social Care Act 2001 s 57(2) (a) or (b): see NOTE 4 heads (1), (2) above).

17 le who has fallen within *ibid* s 57(5A).

18 *Ibid* s 57(3) (amended by the Health and Social Care Act 2008 s 146(3)).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1019. Charging for welfare services.

1019. Charging for welfare services.

A local authority¹ providing a specified service² may recover such charge, if any, for the service as it considers reasonable³. If a person avails himself of such a service, and satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it, the authority must not require him to pay more for it than it appears to the authority that it is reasonably practicable for him to pay⁴. Any charge under these provisions may be recovered summarily as a civil debt⁵.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 The services for which charges may be recovered are services provided under: (1) the National Assistance Act 1948 s 29 (as amended) (see PARA 1020 et seq post); (2) the Health Services and Public Health Act 1968 s 45(1) (as amended) (see PARA 1024 post); (3) the National Health Service Act 1977 s 21, Sch 8 (both as amended) (see PARAS 1025-1027 post); (4) the Residential Homes Act 1980 s 8 (repealed: see now the Health and Social Services and Social Security Adjudications Act 1983 s 29(2), Sch 9 Pt II (as amended)); and (5) the Health and Social Services and Social Security Adjudications Act 1983 Sch 9 Pt II para 1 (as amended) (see PARA 1024 post): Health and Social Services and Social Security Adjudications Act 1983 s 17(2). These services do not include services for which payment may be required under the National Assistance Act 1948 s 22 (as amended) or s 26 (as amended) (see PARA 1035 post): Health and Social Services and Social Security Adjudications Act 1983 s 17(2) (amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 25(1)). Government guidance on charging for non-residential social services is contained in Department of Health Circular No (94)1 paras 17, 18.

The decision to impose a charge can be made some time after the service was provided: *Avon County Council v Hooper* [1997] 1 All ER 532, CA.

3 Health and Social Services and Social Security Adjudications Act 1983 s 17(1).

4 Ibid s 17(3).

5 Ibid s 17(4).

UPDATE

1019 Charging for welfare services

TEXT AND NOTES--The 1983 Act s 17 has effect subject to any regulations under the Community Care (Delayed Discharges etc) Act 2003 s 15 (see NOTE 2): 1948 Act s 17(5) (added by 2003 Act s 17(5)).

NOTE 2--The Secretary of State and the National Assembly for Wales may by regulations require that the provision by, or in pursuance of arrangements made by, a local authority under any enactment mentioned in the 1983 Act s 17(2)(a)-(c), is to be free of charge: see the 2003 Act ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

1983 Act s 17(2) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 72.

NOTE 3--When assessing how much to charge a disabled person for home care support, a local authority cannot adopt an inflexible rule of disregarding payments made to close relatives: *R (on the application of Stephenson) v Stockton-on-Tees BC* [2005] EWCA Civ 960, [2005] 3 FCR 248.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1019A. The provision of support for carers.

1019A. The provision of support for carers.

If an individual aged 16 or over ('the carer') (1) provides or intends to provide a substantial amount of care on a regular basis for another individual aged 18 or over ('the person cared for'); and (2) asks a local authority¹ to carry out an assessment of his ability to provide and to continue to provide care for the person cared for, the local authority must carry out such an assessment if it is satisfied that the person cared for is someone for whom it may provide or arrange for the provision of community care services². For the purposes of such an assessment, the local authority may take into account, so far as it considers it to be material, an assessment already carried out under another enactment³. The requirement to carry out the assessment⁴ does not apply if the individual provides or will provide the care in question either by virtue of a contract of employment or other contract with any person, or as a volunteer for a voluntary organisation⁵. The Secretary of State or, in relation to Wales, the National Assembly for Wales, may give directions as to the manner in which an assessment under the above provisions⁶ is to be carried out or the form it is to take⁷. Subject to any such directions, it is to be carried out in such manner, and is to take such form, as the local authority considers appropriate⁸.

The local authority must consider the assessment and decide (a) whether the carer has needs in relation to the care which he provides or intends to provide; (b) if so, whether they could be satisfied (wholly or partly) by services which the local authority may provide⁹; and (c) if they could be so satisfied, whether or not to provide services to the carer¹⁰. The services referred to are any services which the local authority sees fit to provide and which will in the local authority's view help the carer care for the person cared for, and may take the form of physical help or other forms of support¹¹. A service, although provided to the carer, may take the form of a service delivered to the person cared for if it is one which, if provided to him instead of to the carer, could fall within community care services and they both agree it is to be so delivered; but if a service is delivered to the person cared for it may not, except in prescribed¹² circumstances, include anything of an intimate nature¹³. Regulations may make provision about what is, or is not, of an intimate nature for this purpose¹⁴.

Regulations may make provision for the issue of vouchers¹⁵ by local authorities¹⁶. The regulations may, in particular, provide (i) for the value of a voucher to be expressed in terms of money, or of the delivery of a service for a period of time, or both; (ii) for the person who supplies a service against a voucher, or for the arrangement under which it is supplied, to be approved by the local authority; (iii) for vouchers to be issued to the carer or to the person cared for; (iv) for a maximum period during which a service, or a service of a prescribed description, can be provided against a voucher¹⁷.

In certain circumstances¹⁸, the local authority must decide whether a service is, or is in future, to be provided under the above provisions¹⁹, or by way of community care services, and hence whether it is, or is in future, to be provided to the carer, or to the person cared for²⁰. The duty to make such a decision arises if the local authority (A) is either providing services under the above provisions to the carer, or is providing community care services to or in respect of the person cared for, but not both; and (B) proposes to provide another service to, or in respect of, the one who is not receiving any such service, and the new service, or any service already being provided, is one which could be provided either under the above provisions, or by way of community care services²¹. The duty to make such a decision also arises if (aa) the local authority is not providing services to the carer under the above provisions or to the person cared for by way of community care services, but proposes to provide services to each of them

following assessments carried out under different enactments²²; or (bb) the local authority is providing services both to the carer under the above provisions, and to the person cared for by way of community care services and proposes to provide to either of them a new service and, in the case of head (aa) above, any of the services or, in the case of head (bb) above, the new service, is one which could be provided either under the above provisions, or by way of community care services²³. The local authority's decision is to be made without regard to the means of the carer or of the person cared for²⁴. The functions of the local authority under the above provisions are to be referred to a social services committee²⁵.

If a local authority requests a particular authority²⁶ to assist it in planning the provision of services to persons entitled to an assessment²⁷ or for whom those persons provide or intend to provide a substantial amount of care on a regular basis, that particular authority must give due consideration to the request²⁸. If a local authority is assessing²⁹ or has assessed the ability of a person to provide and to continue to provide care for another person ('the person cared for') and the local authority forms the view that the carer's ability to provide and to continue to provide care for the person cared for might be enhanced by the provision of services (whether for the carer or the person cared for by an authority) the authority or person must give due consideration to the request³⁰. These provisions do not apply in relation to any action which could be the subject of a request³¹ by the local authority to an authority for co-operation³².

1 'Local authority' has the meaning given in the National Health Service and Community Care Act 1990 s 46(3) (see PARA 1005); Carers and Disabled Children Act 2000 s 11(1).

2 Ibid s 1(1). 'Community care services' has the meaning given in the 1990 Act s 46(3) (see PARA 1012); 2000 Act s 11(1). An assessment carried out under s 1(1) must include consideration of whether the carer works or wishes to work or is undertaking or wishes to undertake education, training or any leisure activity: s 1(3A) (added by Carers (Equal Opportunities) Act 2004 s 2(2)).

3 Ie an assessment carried out under the Carers (Recognition and Services) Act 1995 s 1(1) (see PARA 1016); 2000 Act s 1(2).

4 Ie under ibid s 1(1).

5 Ibid s 1(3). For these purposes, 'voluntary organisation' has the same meaning as in the National Assistance Act 1948 (see PARA 1022); 2000 Act s 1(6).

6 Ie under ibid s 1(1).

7 Ibid s 1(4).

8 Ibid s 1(5).

9 References in the 2000 Act, however expressed, to services provided by the local authority include services which the local authority arranges to provide, where it has power to do so: s 11(2).

10 Ibid s 2(1). An authority providing a service under s 2 may recover such charge, if any as it considers reasonable: Health and Social Services and Social Security Adjudications Act 1983 s 17(1), (2) (s 17(2) amended by 2000 Act s 8). However, if a person (1) avails himself of a such a service; and (2) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it, the authority may not require him to pay more for it than it appears is reasonably practicable for him to pay: 1983 Act s 17(3). Any charge may be recovered summarily as a civil debt: s 17(4). As to the recovery of civil debts see MAGISTRATES vol 29(2) (Reissue) PARA 826.

11 2000 Act s 2(2).

12 'Prescribed' means prescribed in regulations; and 'regulations' means regulations made by statutory instrument by the Secretary of State, in relation to England, or by the National Assembly for Wales, in relation to Wales: ibid s 11(1). Regulations may make different provision for different cases and may include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State, or the National Assembly for Wales, thinks fit: s 11(3). A statutory instrument containing regulations made by the Secretary of State under any provision in the 2000 Act is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(4).

13 Ibid s 2(3).

14 Ibid s 2(4). For the purposes of s 2(3) a service delivered to the person cared for is of an intimate nature if it involves (1) lifting, washing, grooming, feeding, dressing, bathing, toileting, administering medicines or otherwise having physical contact with the person cared for; (2) assistance in connection with washing, grooming, feeding, dressing, bathing, administering medicines or using the toilet; or (3) supervising him while he is dressing, bathing or using the toilet: Carers (Services) and Direct Payments (Amendment) (England) Regulations 2001, SI 2001/441, reg 2(1); Carers (Services) and Direct Payments (Amendment) (Wales) Regulations 2001, SI 2001/2186, reg 2(1). However, in relation to England, where a service (A) is being delivered to the person cared for, a service of an intimate nature may be provided if (a) during the delivery of service A, the person cared for asks the person delivering that service to provide a service of an intimate nature; (b) the person lacks capacity, within the meaning of the Mental Capacity Act 2005 (see MENTAL HEALTH), to consent to the provision of a service of an intimate nature and it is provided in accordance with the principles of the 2005 Act; or (c) except where head (b) above, applies, the person cared for is in a situation in which he is likely to suffer serious personal harm unless a service of an intimate nature is provided to him and the person providing service A reasonably believes that it is necessary to provide a service of an intimate nature because the likelihood of serious personal harm to the person cared for is imminent: SI 2001/441 reg 2(2) (substituted by SI 2007/1898). However, in relation to Wales, where a service is being delivered to the person cared for and (a) during the delivery of that service the person cared for asks the person delivering the service to provide a service of an intimate nature; or (b) the person cared for is in a situation in which he is likely to suffer serious personal harm unless a service of an intimate nature is provided to him and (i) the person cared for is unable to consent to the provision of that service; or (ii) the person providing the service reasonably believes it is necessary to provide that service because the likelihood of serious personal harm to the person cared for is imminent, a service of an intimate nature may be provided: SI 2001/2186 reg 2(2).

15 'Voucher' means a document whereby, if the local authority agrees with the carer that it would help him care for the person cared for if the carer had a break from caring, the person cared for may secure that services in lieu of the care which would otherwise have been provided to him by the carer are delivered temporarily to him by another person by way of community care services: 2000 Act s 3(2).

16 2000 Act s 3(1). See Carers and Disabled Children (Vouchers) (England) Regulations 2003, SI 2003/1216.

17 2000 Act s 3(3).

18 See TEXT AND NOTES 21-23 below.

19 I.e. the provisions of the 2000 Act.

20 Ibid s 4(4).

21 Ibid s 4(2).

22 I.e. an assessment under ibid s 1 and an assessment under the National Health Service and Community Care Act 1990 s 47: see PARA 1015.

23 2000 Act s 4(3).

24 Ibid s 4(5).

25 I.e. established under the Local Authority Social Services Act 1970 s 2: see s 2(1), Sch 1 (Sch 1 amended by 2000 Act s 9). See further PARA 1006.

26 I.e. any other local authority, any local education authority, and local housing authority, and any special health authority, local health board, primary care trust, national health service trust or NHS foundation trust: Carers (Equal Opportunities) Act 2004 s 3(5). 'Local education authority' has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) PARA 20); and 'local housing authority' has the same meaning as in the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) PARA 9): 2004 Act s 3(7).

27 I.e. under the Carers (Recognition and Services) Act 1995 and the 2000 Act ss 1, 6 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 854): 2004 Act s 3(4).

28 Ibid s 3(2).

29 See NOTE 27 above.

30 2004 Act s 3(2), (3). As to the application of s 3 to the Isles of Scilly see the Carers (Equal Opportunities) Act 2004 (Isles of Scilly) Order 2005, SI 2005/1096.

31 le made under the Children Act 1989 s 27: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 932.

32 2004 Act s 3(6).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(1) IN GENERAL/1019B. Delayed discharge payments.

1019B. Delayed discharge payments.

The following provisions are in force in relation to England: SI 2003/2280.

1. Determination of need for community care services on discharge

Where a person ('the patient') is or is expected to become a qualifying hospital patient¹ at a particular hospital² and the responsible NHS body³ considers that it is unlikely to be safe to discharge the patient from hospital unless one or more community care services⁴ are made available for him⁵, it must give notice of the patient's case (1) to the social services authority⁶ appearing to the NHS body to be the authority in whose area the patient is ordinarily resident when the notice is given⁷; or (2) if it appears to it that the patient has no settled residence, to the social services authority in whose area the hospital is situated⁸.

A notice⁹ remains in force until the patient to which it relates is discharged, unless it has previously ceased to have effect by virtue of the responsible NHS body withdrawing the notice or by virtue of circumstances prescribed in regulations¹⁰. The responsible NHS body may withdraw the notice by giving notice of withdrawal to the responsible authority¹¹. Regulations may prescribe other circumstances in which the notice ceases to have effect¹².

Where notice¹³ of a patient's case has been given¹⁴ the responsible authority must (a) carry out an assessment of the patient's needs with a view to identifying any community care services that need to be made available in order for it to be safe to discharge him¹⁵; and (b) after consulting the responsible NHS body, decide which of those services, if any, the authority will make available for the patient¹⁶.

Where the carer asks the responsible authority to carry out an assessment of the needs of any person who is a carer in respect of the patient ('the carer') with a view to identifying certain services¹⁷, or has, within the period of twelve months ending with the day on which the notice¹⁸ was given, or at any time after that day, asked the responsible authority to carry out an assessment¹⁹, the responsible authority must also (i) carry out such an assessment of the needs of the carer; and (ii) after consulting the responsible NHS body, decide which of those services, if any, the authority will make available to the carer²⁰.

The responsible authority must keep under review the needs of the patient, and the needs of any carer whose needs it has assessed²¹, so far as affecting the services that need to be made available in order for it to be safe to discharge the patient²². The responsible authority may, after consulting the responsible NHS body, alter its decision²³ or any decision taken by it²⁴ to take account of any change in circumstances since the assessment²⁵.

Where notice of a patient's case has been given²⁶ the responsible NHS body, and any other NHS body which is considering whether to provide services to the patient after discharge, must consult the responsible authority before deciding what services, if any, it will make available to him in order for it to be safe to discharge the patient²⁷. The responsible NHS body must give the responsible authority notice of the day on which it proposes to discharge the patient²⁸. The notice remains in force until the end of the relevant day, unless it has previously been withdrawn²⁹. The responsible NHS body may withdraw the notice at any time before the end of the relevant day by giving notice of withdrawal to the responsible authority³⁰.

1 'Qualifying hospital patient' means a person being accommodated at a health service hospital or an independent hospital in pursuance of arrangements made by an NHS body, who is receiving, has received or is expected to receive, care of a description prescribed in regulations: Community Care (Delayed Discharges etc) Act 2003 s 1(1). The definition does not include any person who is ordinarily resident outside England and Wales: s 1(2). As to regulations and orders, see s 11. As to such prescribed care, see the Delayed Discharges (England) Regulations 2003, SI 2003/2277, reg 3. 'Health service hospital' means a health service hospital within the meaning given by the National Health Service Act 2006 or the National Health Service (Wales) Act 2006: Community Care (Delayed Discharges etc) Act 2003 s 12 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 231). 'Independent hospital' has the same meaning as in the Care Standards Act 2000 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 983): Community Care (Delayed Discharges etc) Act 2003 s 12. 'NHS body' means a National Health Service trust, an NHS foundation trust or a primary care trust (in England) or a local health board (in Wales): s 1(1) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 130). An NHS body may make arrangements with others to perform its functions under the Community Care (Delayed Discharges etc) Act 2003 Pt 1 (ss 1-14): s 1(3)-(5).

2 Ibid s 2(1)(a).

3 'The responsible NHS body', in relation to a person who is or is expected to become a qualifying hospital patient, means (1) if the hospital concerned is a health service hospital, the NHS body managing the hospital; or (2) if the hospital concerned is an independent hospital, the NHS body making the arrangements for the patient to be accommodated: ibid s 2(5).

4 'Community care service' has the meaning given by of the National Health Service and Community Care Act 1990 s 46(3) (see PARA 1012): Community Care (Delayed Discharges etc) Act 2003 s 12. The appropriate minister may by order provide for Pt 1 (ss 1-14) to apply in relation to qualifying care home patients as it applies to qualifying hospital patients: s 14(1), (2) (s 14 not yet in force). 'Care home' has the same meaning as in the Care Standards Act 2000 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 985): Community Care (Delayed Discharges etc) Act 2003 s 14(3). 'Qualifying care home patient' means a person being accommodated at a care home, in pursuance of arrangements made by an NHS body, who is receiving, has received or is expecting to receive, care of a description prescribed in regulations: s 14(3). The care prescribed under s 14(3) must be care which is prescribed under s 1 for the purposes of the definition of 'qualifying hospital patient', or which as nearly as possible corresponds to care that is so prescribed: s 14(4).

5 Ibid s 2(1)(b).

6 'Social services authority' means a local authority for the purposes of the Local Authority Social Services Act 1970 (see PARA 1005): Community Care (Delayed Discharges etc) Act 2003 s 12.

7 Ibid s 2(2)(a).

8 Ibid s 2(2)(b). That notice must state that it is given under s 2 and, if given before the day on which the patient is admitted to the hospital, must not be given earlier than the beginning of the period of eight days ending with the day on which he is expected to be admitted: s 2(3). Before giving a notice under s 2, the responsible NHS body must consult the patient and, if the responsible NHS body is aware of the identity of a person who is a carer in respect of the patient and it is reasonably practicable to consult him, that carer: s 2(4). 'Carer', in relation to a qualifying hospital patient, means a person who provides or intends to provide a substantial amount of care on a regular basis for the patient and is entitled to ask for an assessment under the Carers and Disabled Children Act 2000 s 1 (see PARA 1919A): Community Care (Delayed Discharges etc) Act 2003 s 12.

9 Ie a notice under ibid s 2.

10 Ibid s 3(1).

11 Ibid s 3(2). 'The responsible authority', in relation to a person whose case has been notified under s 2, means, subject to any regulations under s 10 (see PARA 1019B.4), the social services authority to which the notice is given: s 2(6).

12 Ibid s 3(3). If the notice ceases to have effect before the patient is discharged (1) no further steps under ss 4, 5 or 6 resulting from the notice may be taken and no liability, or further liability, to make a payment under s 6(2) accrues; and (2) the responsible NHS body may, subject to s 2(1), give a fresh notice under s 2 in relation to the patient: s 3(4). Head (1) does not affect any liability which accrues before the notice ceases to have effect: s 3(4). Regulations may provide for (a) the form and content of (i) notices under s 2; and (ii) notices of withdrawal under s 3(2), and the manner in which such notices are to be given; (b) circumstances in which notices under s 2 must be withdrawn; and (c) determining the day on which a notice under s 2 or a notice of withdrawal under s 3(2) is given, including provision prescribing circumstances in which a notice under s 2 is to be treated for any specified purpose as having been given on a day other than that on which it was in fact

given: s 3(5). See further the Delayed Discharges (England) Regulations 2003, SI 2003/2277 (amended by SI 2006/552, SI 2006/562).

13 Ie a notice under Community Care (Delayed Discharges etc) Act 2003 s 2.

14 Ibid s 4(1).

15 Ibid s 4(2)(a).

16 Ibid s 4(2)(b). The duties in s 4(2) apply whether or not the patient's needs for community care services or the carer's needs for services, as the case may be, have previously been assessed: s 4(5). The responsible authority must inform the responsible NHS body of such a decision: s 4(8). Anything done under s 4(2) is to be treated as done under the National Health Service and Community Care Act 1990 s 47(1), but without prejudice to anything to be done under s 47 in relation to any other community care services: Community Care (Delayed Discharges etc) Act 2003 s 4(9).

17 Ie services which (1) the authority may provide under the Carers and Disabled Children Act 2000 s 2; and (2) need to be made available to the carer in order for it to be safe to discharge the patient: Community Care (Delayed Discharges etc) Act 2003 s 4(3)(a).

18 Ie a notice under the ibid s 2.

19 Ibid s 4(4). The assessment referred to is an assessment under the Carers and Disabled Children Act 2000 s 1.

20 Community Care (Delayed Discharges etc) Act 2003 s 4(3). The duties in s 4(3) apply whether or not the patient's needs for community care services or the carer's needs for services, as the case may be, have previously been assessed: s 4(5). The responsible authority must inform the responsible NHS body of such a decision: s 4(8). Anything done under s 4(3) is to be treated as done under the Carers and Disabled Children Act 2000 s 1 or 2, but without prejudice to anything to be done under s 1 or 2 in relation to other services which may be provided to the carer: Community Care (Delayed Discharges etc) Act 2003 s 4(10).

21 Ie under ibid s 4(3)(a).

22 Ibid s 4(6).

23 Ie under ibid s 4(2)(b).

24 Ie under ibid s 4(3).

25 Ibid s 4(7). The assessment referred to is an assessment carried out under s 4(2)(a) or s 4(3), as the case may be. The responsible authority must inform the responsible NHS body of any such alteration to a decision under s 4(2)(b) or s 4(3): s 4(8).

26 Ie a notice under ibid s 2.

27 Ibid s 5(1), (2).

28 Ibid s 5(3). If such notice is withdrawn before the end of the relevant day, the duty under s 5(3) applies again: s 5(9). 'The relevant day', in relation to a qualifying hospital patient, is the later of the day specified in the notice under s 5(3) and the last day of the prescribed minimum interval after the notice under s 2 is given: s 5(6).

29 Ibid s 5(4). If such notice is withdrawn before the end of the relevant day, when a fresh notice under s 5(3) is given, s 5(6) applies again for the purpose of identifying a new 'relevant day': s 5(9). Regulations may prescribe a period as the minimum interval after a notice under s 2 is given, but that period must (1) begin with the day after that on which the notice under s 2 is given; and (2) be a period of at least two days: s 5(7). Until 31 March 2005, the period of two days referred to in s 5(7) is exclusive of Sundays and public holidays: s 5(8). As to matters for which regulations may provide, see s 5(10). See SI 2003/2277, NOTE 12.

30 Community Care (Delayed Discharges etc) Act 2003 s 5(5).

2. Delayed discharge payments

The following provisions apply where notice of a patient's case¹ and notice of the proposed discharge day² have both been given, and are in force³. If by the end of the relevant day (1) the

patient has not been discharged and the responsible authority has not complied with its duties⁴; or (2) it has not been possible to discharge the patient because, and only because, either (a) the responsible authority has not made available for the patient a community care service which it decided⁵ to make available for him; or (b) the responsible authority has not made available for the patient's carer a service which it decided⁶ to make available to the carer, the responsible authority must make a payment of the prescribed amount⁷ for each day of the delayed discharge period⁸.

If on any day before that on which the patient is discharged the responsible authority gives notice to the responsible NHS body that (i) it has complied with its duties⁹; (ii) every community care service that it decided¹⁰ to make available has been made available for the patient; and (iii) every service that it decided¹¹ to make available to a carer has been made available, the delayed discharge period ends with that day¹².

1 Ie under the Community Care (Delayed Discharges etc) Act 2003 s 2 (see PARA 1019B.1).

2 Ie under *ibid* s 5(3) (see PARA 1019B.1).

3 *Ibid* s 6(1) (in force on 5 January 2004: SI 2003/2280).

4 Ie under the Community Care (Delayed Discharges etc) Act 2003 s 4(2) (see PARA 1019B.1).

5 Ie under *ibid* s 4(2)(b) (see PARA 1019B.1).

6 Ie under *ibid* s 4(3) (see PARA 1019B.1).

7 The amount of the payment is as prescribed in regulations: *ibid* s 6(2). In prescribing an such amount, the appropriate Minister must have regard, among other things, to either or both of (1) costs to NHS bodies of providing accommodation and personal care to patients who are ready to be discharged; and (2) costs to social services authorities of providing community care services to, and services to carers in relation to, persons who have been discharged: s 7(1). The amount prescribed is £120 for higher rate authorities, and £100 for lower rate authorities: see the Delayed Discharges (England) Regulations 2003, SI 2003/2277, reg 7, Schedule. Except where otherwise prescribed by regulations, the payment must be made to the responsible NHS body: Community Care (Delayed Discharges etc) Act 2003 s 7(2), (3).

8 Community Care (Delayed Discharges etc) Act 2003 s 6(2), (3). For this purpose, 'the delayed discharge period' is the period beginning with the day after the relevant day, and ending with the day on which the patient is discharged: s 6(4) (in force on 5 January 2004: SI 2003/2280). Regulations may (1) require days after the relevant day not to be treated as days of the delayed discharge period; (2) prescribe circumstances, other than those mentioned in the Community Care (Delayed Discharges etc) Act 2003 s 6(4) and (5), in which the delayed discharge period ends; (3) make provision for determining the day on which a patient is discharged, including provision prescribing circumstances in which a patient is to be treated as having been discharged on a day other than that on which he was in fact discharged: s 6(7). See the Delayed Discharges (England) Regulations 2003, SI 2003/2277, PARA 1019B.1.

9 Ie its duties under the Community Care (Delayed Discharges etc) Act 2003 s 4(2).

10 Ie decided under *ibid* s 4(2)(b): see PARA 1019B.1.

11 Ie decided under *ibid* s 4(3): see PARA 1019B.1.

12 *Ibid* s 6(5). Where the decision in question has been altered under s 4(7) (see PARA 1019B.1), the reference to services so decided refers to decisions in question to any services specified in the altered decision: s 6(6).

3. Disputes

Any question as to the ordinary residence of a person who is or is expected to become a qualifying hospital patient is to be determined by the Secretary of State or by the National Assembly for Wales¹. Regulations may make provision for panels² to assist in the resolution of disputes between two or more public authorities³.

1 Community Care (Delayed Discharges etc) Act 2003 s 8(1). The Secretary of State and the Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Assembly: s 8(2). Those arrangements may include provision for the Secretary of State and the Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case: s 8(3).

2 The panels appointed by Strategic Health Authorities in England and by Local Health Boards in Wales: *ibid* s 9(1).

3 *Ibid* s 9(1). 'Public authority' means an NHS body or a social services authority: s 9(6). Further provision relating to such regulations is made by s 9(2)-(5). See the Delayed Discharges (England) Regulations 2003, SI 2003/2277, PARA 1019B.1.

4. Adjustments between social services authorities

Regulations may be made to deal with cases where, in relation to a qualifying hospital patient, it appears to the responsible authority that the patient is ordinarily resident in the area of another social services authority¹.

1 Community Care (Delayed Discharges etc) Act 2003 s 10(1). As to the provisions which such regulations may make, see s 10(2), (3). See the Delayed Discharges (England) Regulations 2003, SI 2003/2277, PARA 1019B.1.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1020. Welfare arrangements under the National Assistance Act 1948.

(2) WELFARE ARRANGEMENTS

1020. Welfare arrangements under the National Assistance Act 1948.

A local authority¹ may with the approval of the Secretary of State², and to such extent as he may direct³ in relation to persons ordinarily resident⁴ in the area of the local authority⁵ must, make arrangements⁶ for promoting the welfare of certain persons, namely persons aged 18 or over who are blind⁷, deaf⁸ or dumb, or who suffer from mental disorder of any description, and other persons aged 18 or over who are substantially and permanently handicapped⁹ by illness, injury or congenital deformity or such other disabilities¹⁰ as may be prescribed by the Secretary of State¹¹.

Nothing in these provisions authorises or requires (1) the payment of money to any person to whom these provisions apply, other than persons for whom work is provided¹² or who are engaged in work which they are enabled to perform in consequence of anything done in pursuance of arrangements made under these provisions¹³; or (2) the provision of any accommodation or services required to be provided under the National Health Service Act 1977¹⁴.

A local authority providing a service under these provisions may recover such charge, if any, as the authority considers reasonable¹⁵.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 As to the Secretary of State see PARA 1001 note 6 ante.

See Department of Health Circular No LAC (93)10 Appendix 2, which approves the making by local authorities of arrangements under the National Assistance Act 1948 s 29(1) (as amended) for the following purposes: (1) the provision of a social work service and advice and support for people in their own homes and elsewhere; (2) the provision, at centres or elsewhere, of facilities for social rehabilitation and adjustment to disability including assistance in overcoming limitations of mobility or communication; (3) the provision, at centres or elsewhere, of facilities for occupational, social, cultural and recreational activities and, where appropriate, the making of payments to persons for work undertaken by them; (4) the provision of holiday homes; (5) the provision of free or subsidised travel for all or any persons who do not otherwise qualify for travel concessions; (6) assistance in finding accommodation so as to take advantage of arrangements under s 29(1) (as amended); (7) contribution to the cost of employing a warden on welfare functions in warden assisted housing schemes; (8) the provision of warden services for occupiers of private housing; (9) all or any of the arrangements referred to in s 29(4) (as amended) (see PARA 1021 post).

3 See Department of Health Circular No LAC (93)10, which directs local authorities to make arrangements in respect of the purposes referred to in note 2 heads (1)-(3) supra, and further directs local authorities to make the arrangements referred to in PARA 1021 head (7) post.

4 As to ordinary residence see PARA 1032 note 3 post.

5 As to the duty of a local authority to inform itself of the number of persons within its area to whom these provisions apply and of the need for the making of arrangements for them see PARA 1017 ante.

6 As to particular arrangements see PARA 1021 post. Such arrangements fall within the definition of 'community care services': see PARA 1012 ante.

7 'Blind person' means a person so blind as to be unable to perform any work for which eyesight is essential: National Assistance Act 1948 s 64(1).

8 These powers do not extend to the provision of a school for deaf children: *Royal Cross School for the Deaf Trustees v Morton (Valuation Officer)* [1975] 2 All ER 519, [1975] 1 WLR 1002, CA.

9 As to the meaning of 'substantially and permanently handicapped' see Department of Health and Social Security Circular No 45/71.

10 'Disability' includes mental as well as physical disability: National Assistance Act 1948 s 64(1).

11 Ibid s 29(1) (amended by the Mental Health (Scotland) Act 1960 ss 113(1), 114; the Local Government Act 1972 s 195(6), Sch 23 para 2(4); and the Children Act 1989 s 108(5), Sch 13 para 11(2)). 'Prescribed' means prescribed by regulations under the National Assistance Act 1948: s 64(1). At the date at which this volume states the law, no such regulations prescribing other disabilities had been made.

12 Ie under arrangements made by virtue of *ibid* s 29(4)(c) or s 29(4)(d).

13 Ibid s 29(6)(a).

14 Ibid s 29(6)(b). See generally HEALTH SERVICES.

15 See the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante. As to charges for accommodation see PARAS 1021, 1033, 1035 post.

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1020 Welfare arrangements under the National Assistance Act 1948

NOTE 11--1948 Act s 29(1) imposes a power on a local authority to provide for someone who is not ordinarily resident in its area, but that power does not give rise to an ongoing duty to fund forever: *R (on the application of Manchester City Council) v St Helens MBC* (2009) Times, 13 November, CA.

TEXT AND NOTE 14--Reference to National Health Service Act 1977 now to National Health Service Act 2006 or National Health Service (Wales) Act 2006: 1948 Act s 29(6) (b) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 8).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1021. Particular welfare arrangements.

1021. Particular welfare arrangements.

Without prejudice to the generality of its power to make welfare arrangements¹, a local authority² may make arrangements:

- 12 (1) for informing persons to whom such arrangements relate of the services available for them³;
- 13 (2) for instructing such persons in their own homes or elsewhere in methods of overcoming the effects of their disabilities⁴;
- 14 (3) for providing workshops where such persons may be engaged in suitable work, whether under a contract of service or otherwise, and hostels where persons engaged in the workshops, and other persons to whom such arrangements relate and for whom work or training is being provided⁵, may live⁶;
- 15 (4) for providing such persons with suitable work, whether under a contract of service or otherwise, in their own homes or elsewhere⁷;
- 16 (5) for helping such persons in disposing of the produce of their work⁸;
- 17 (6) for providing such persons with recreational facilities in their own homes or elsewhere⁹;
- 18 (7) for compiling and maintaining classified registers of the persons to whom such arrangements relate¹⁰.

1 le arrangements under the National Assistance Act 1948 s 29(1) (as amended): see PARA 1020 ante.

2 As to the meaning of 'local authority' see PARA 1005 ante.

3 National Assistance Act 1948 s 29(4)(a). See also PARA 1017 ante.

4 Ibid s 29(4)(b).

5 le under the Disabled Persons (Employment) Act 1944 or the Employment and Training Act 1973: see EMPLOYMENT.

6 National Assistance Act 1948 s 29(4)(c) (amended by the Employment and Training Act 1973 s 14(1), Sch 3 para 3). Where accommodation is provided under this provision in a hostel managed by a local authority, the National Assistance Act 1948 s 22 (as amended) (see PARA 1035 post) applies as it applies where accommodation is provided under s 21 (as amended) (see PARA 1029 et seq post): s 29(4A)(a) (s 29(4A) added by the National Health Service and Community Care Act 1990 s 44(7)). Where accommodation is provided in a hostel managed by a person other than a local authority under arrangements made with that person, the National Assistance Act 1948 s 26(2)-(4A) (as amended) applies as it applies where accommodation is provided under arrangements made by virtue of s 26 (as amended) (see PARA 1033 post): s 29(4A)(b) (as so added). Section 32 (as amended) (see PARA 1009 ante) and s 43 (as amended) (see PARA 1039 post) apply to hostel accommodation provided under s 29(4)(c) (as amended) as they apply where accommodation is provided under ss 21-26 (as amended): s 29(4A)(c) (as so added). References to 'accommodation' include references to board and other services, amenities and requisites provided in connection with the accommodation, except where, in the opinion of the authority managing the premises or making the arrangements for accommodation to be provided, their provision is unnecessary: see s 29(4A) (as so added).

7 Ibid s 29(4)(d).

8 Ibid s 29(4)(e).

9 Ibid s 29(4)(f).

10 Ibid s 29(4)(g).

UPDATE**1020-1028 Welfare Arrangements**

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1021 Particular welfare arrangements

NOTE 6--National Assistance Act 1948 s 29(4A)(c) amended: Health and Social Care Act 2008 s 147(2).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1022. Use of voluntary organisations as agents.

1022. Use of voluntary organisations as agents.

A local authority¹ may, in accordance with welfare arrangements², employ as its agent³ any voluntary organisation⁴ or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services⁵, being an organisation or person which appears to the authority to be capable of providing the service to which the arrangements apply⁶.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 I.e. arrangements under the National Assistance Act 1948 s 29(1) (as amended): see PARA 1020 ante.

3 I.e. for the purposes of ibid s 29 (as amended): see PARAS 1020-1021 ante.

4 'Voluntary organisation' means a body whose activities are carried on otherwise than for profit, but does not include any public or local authority: ibid s 64(1).

5 I.e. for any of the persons to whom ibid s 29 (as amended) applies: see PARA 1020 ante.

6 Ibid s 30(1) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(5); and the National Health Service and Community Care Act 1990 s 42(6)).

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1023. Welfare arrangements under the Chronically Sick and Disabled Persons Act 1970.

1023. Welfare arrangements under the Chronically Sick and Disabled Persons Act 1970.

Where a local authority¹ is satisfied in the case of any person² ordinarily resident³ in its area that it is necessary in order to meet that person's needs⁴ for it to make arrangements for all or any of certain matters, it is its duty to make those arrangements in the exercise of its functions⁵. These matters are:

- 19 (1) the provision of practical assistance for that person in his home⁶;
- 20 (2) the provision for him of, or assistance to him in obtaining, wireless, television, library or similar recreational facilities⁷;
- 21 (3) the provision for him of lectures, games, outings or other recreational facilities outside his home, or assistance to him in taking advantage of educational facilities available to him⁸;
- 22 (4) the provision for him of facilities for, or assistance in, travelling to and from his home for the purpose of participating in any services provided under the arrangements or, with the authority's approval, in any other similar services⁹;
- 23 (5) the provision of assistance for him in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience¹⁰;
- 24 (6) facilitating the taking of holidays by him, whether at holiday homes or otherwise and whether provided under arrangements made by the authority or otherwise¹¹;
- 25 (7) the provision of meals for him, whether in his home or elsewhere¹²;
- 26 (8) the provision for him of, or assistance to him in obtaining, a telephone and any equipment necessary to enable him to use a telephone¹³.

In providing such services under the Chronically Sick and Disabled Persons Act 1970, the local authority is exercising its functions under the National Assistance Act 1948¹⁴, and therefore is entitled to charge for services provided¹⁵.

1 le a local authority having functions under the National Assistance Act 1948 s 29 (as amended) (see PARAS 1020-1021 ante). As to the meaning of 'local authority' see PARA 1005 ante.

2 le any person to whom *ibid* s 29 (as amended) applies: see PARA 1020 ante. See also PARA 1017 note 4 ante.

3 As to ordinary residence see PARA 1032 note 3 post.

4 A local authority must decide whether the needs of a disabled person call for the provision by the authority of any services in accordance with the Chronically Sick and Disabled Persons Act 1970 s 2(1) (as amended) when requested to do so by a disabled person or his carer: see the Disabled Persons (Services, Consultation and Representation) Act 1986 s 4(a), (c). As from a day to be appointed the authorised representative of a disabled person may also make such a request: see s 4(b). At the date at which this volume states the law, no such day had been appointed. As to the appointment, and the rights, of authorised representatives see ss 1, 2 (both as amended); but note that at the date at which this volume states the law neither of these provisions is in force.

In certain circumstances, when deciding whether a disabled person's needs call for the provision of services, the local authority must have regard to the abilities of that person's carer: see s 8(1); and PARA 1016 ante.

In assessing the person's needs and whether it is necessary to make arrangements in order to meet his needs, a local authority is entitled to take account of the resources available to it: *R v Gloucestershire County Council, ex p Barry* [1997] AC 584, [1997] 2 All ER 1, HL.

Any increase attributable to the Disabled Persons (Services, Consultation and Representation) Act 1986 in the sums payable out of money provided by Parliament under any other enactment must be paid out of money so provided: s 17.

5 le its functions under the National Assistance Act 1948 s 29 (as amended): Chronically Sick and Disabled Persons Act 1970 s 2(1). This duty is subject to the provisions of the Local Authority Social Services Act 1970 s 7(1), s 7A (as added) (see PARA 1011 ante): Chronically Sick and Disabled Persons Act 1970 s 2(1) (amended by the Local Authority Social Services Act 1970 s 14(1), Sch 2 para 12; the Local Government Act 1972 s 272(1), Sch 30; and the National Health Service and Community Care Act 1990 s 66, Sch 9 para 12, Sch 10).

The duty contained in the Chronically Sick and Disabled Persons Act 1970 s 2 (as amended) is subordinated to the provisions of the National Assistance Act 1948, and the Chronically Sick and Disabled Persons Act 1970 s 2 (as amended) and the National Assistance Act 1948 s 29 (as amended) (see PARAS 1020-1021 ante) must be read together: *Wyatt v Hillingdon London Borough Council* (1978) 76 LGR 727, CA. There is no private law remedy sounding in damages for the failure to comply with this duty: see *Wyatt v Hillingdon London Borough Council* supra at 733-734 per Lane LJ.

6 Chronically Sick and Disabled Persons Act 1970 s 2(1)(a).

7 Ibid s 2(1)(b).

8 Ibid s 2(1)(c).

9 See ibid s 2(1)(d).

10 Ibid s 2(1)(e).

11 Ibid s 2(1)(f).

12 Ibid s 2(1)(g).

13 Ibid s 2(1)(h).

14 le the National Assistance Act 1948 s 29 (as amended): see PARA 1020 ante.

15 *R v Powys County Council, ex p Hambridge (Secretary of State for Health, Intervener)* (1997) Times, 5 November. See also the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante.

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1023 Welfare arrangements under the Chronically Sick and Disabled Persons Act 1970

TEXT AND NOTES--Disabled Persons (Services, Consultation and Representation) Act 1986 s 2 amended: Care Standards Act 2000 Sch 4 para 11; Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 65; National Health Service (Consequential Provisions) Act 2006 Sch 1 para 88; Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90; National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002, SI 2002/2469; References to Health Authorities Order 2007, SI 2007/961.

NOTE 3--Where a person is in her present abode voluntarily and with a settled intention of remaining there for the time being and her disabilities do not appear to prevent her from having the requisite understanding for both those mental elements, that is sufficient to justify a finding that she is ordinarily resident in a particular area: *R v Kent CC, ex p S* [1999] 3 FCR 193.

NOTE 4--See *R (on the application of Spink) v Wandsworth LBC* [2005] EWCA Civ 302, [2005] 2 All ER 955 (parental resources may be taken into account where claimant is a child).

NOTE 10--See *R (on the application of BG) v Medway Council* [2005] EWHC 1932 (Admin), [2005] 3 FCR 199 (provision of financial assistance to adapt claimant's home subject to the condition that it would have to be repaid if claimant ceased to live there within 20 years was reasonable).

NOTE 11--A local authority which has a duty to facilitate the taking of holidays by a person under the 1970 Act s 2(1)(f) has the power to meet that duty by covering the basic costs of a holiday, and a policy which excludes the provision of the basic costs of holidays unlawfully fetters the authority's discretion: *R v North Yorkshire CC, ex p Hargreaves* (1997) 96 LGR 39.

NOTE 15--*R v Powys CC*, cited, affirmed: [1998] 3 FCR 190, CA. For subsequent related proceedings see *R v Powys CC, ex p Hambidge (No 2)* [2000] 2 FCR 69, CA (charging a recipient of both disability living allowance and income support while not charging a recipient of income support only is not discrimination contrary to the Disability Discrimination Act 1995).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1024. Welfare arrangements for old people.

1024. Welfare arrangements for old people.

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

A local authority may employ as its agent for these purposes any voluntary organisation⁵ or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for old people, being an organisation or person appearing to the authority to be capable of promoting the welfare of old people⁶.

A local authority providing a service under these provisions may recover such charge, if any, as the authority considers reasonable⁷.

Arrangements may be made for providing meals and recreation for old people in their homes or elsewhere⁸.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 The Health Services and Public Health Act 1968 s 45(1) referred to the Minister of Health (see the National Assistance Act 1948 s 35(1); and the Health Services and Public Health Act 1968 s 45(5) (as amended)), whose functions have been transferred to the Secretary of State for Health, and references to the minister are to be read as references to the Secretary of State: see the Secretary of State for Social Services Order 1968, SI 1968/1699; and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State see PARA 1001 note 6 ante.

The Secretary of State has approved the making by authorities of arrangements for any of the following purposes to meet the needs of the elderly: (1) to provide meals and recreation in the home and elsewhere; (2) to inform the elderly of services available to them and to identify elderly people in need of services; (3) to provide facilities or assistance in travelling to and from the home for the purpose of participating in services provided by the authority or similar services; (4) to assist in finding suitable households for boarding elderly persons; (5) to provide visiting and advisory services and social work support; (6) to provide practical assistance in the home, including assistance in the carrying out of works of adaptation or the provision of any additional facilities designed to secure greater safety, comfort or convenience; (7) to contribute to the cost of employing a warden on welfare functions in warden assisted housing schemes; and (8) to provide warden services for occupiers of private housing: see Department of Health and Social Security Circular No 19/71 para 4.

3 Health Services and Public Health Act 1968 s 45(1). These arrangements are community care services (see PARA 1012 ante); and matters relating to the discharge by a local authority of these functions stand referred to the local authority's social services committee (see PARA 1006 ante).

4 Ibid s 45(4) (amended by the National Health Service Act 1977 s 129, Sch 15 para 43).

5 'Voluntary organisation' means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority: Health Services and Public Health Act 1968 s 45(11).

6 Ibid s 45(3) (amended by the National Health Service and Community Care Act 1990 s 42(7)). As to financial and other assistance to voluntary organisations see PARA 1010 ante.

7 See the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante.

8 See *ibid* s 29(2), Sch 9 Pt II (amended by the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 12).

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1024 Welfare arrangements for old people

TEXT AND NOTES--No arrangements under the Health Services and Public Health Act 1968 s 45 may be given effect to in relation to a person to whom the Immigration and Asylum Act 1999 s 115 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 257) applies solely because he is destitute or because of the physical effects, or anticipated physical effects, of his being destitute: 1968 Act s 45(4A) (added by the 1999 Act s 117(1)). Section 95(3), (5)-(8), Sch 8 para 2 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 246) apply for the purposes of the 1968 Act s 45(4A) as they apply for the purposes of the 1999 Act s 95, but the references in s 95(5), (7), Sch 8 para 2 to the Secretary of State are replaced with references to a local authority: 1968 Act s 45(4B) (added by the 1999 Act s 117(1)).

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the Health Services and Public Health Act 1968 s 45 or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

TEXT AND NOTE 4--In 1968 Act s 45(4) for 'the National Health Service Act 1977' read 'the National Health Service Act 2006 or the National Health Service (Wales) Act 2006': National Health Service (Consequential Provisions) Act 2006 Sch 1 para 34.

See also *Khana v Southwark LBC* [2001] EWCA Civ 989, [2002] HLR.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1024A.
Commissioner for Older People in Wales.

1024A. Commissioner for Older People in Wales.

1. Establishment and functions

There is established a Commissioner for Older People in Wales ('the Commissioner')¹.

The Commissioner may (1) promote awareness of the interests of older people in Wales and of the need to safeguard those interests; (2) promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales; (3) encourage best practice in the treatment of older people in Wales; (4) keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales². The Commissioner may consider, and make representations to the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly government about, any matter relating to the interests of older people in Wales³.

For the purpose of safeguarding and promoting the interests of older people in Wales, the Commissioner may review the effect on them of (a) the discharge or proposed discharge of a function of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, including the making or proposed making of subordinate legislation; (b) a failure by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government to discharge a function; (c) the discharge or proposed discharge in relation to Wales of a relevant function⁴ of a specified person⁵; (d) a failure by such a person to discharge a relevant function in relation to Wales⁶.

The Commissioner may review advocacy arrangements, complaints arrangements and whistle-blowing arrangements, and their operation, for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of relevant older people in Wales⁷. Regulations may confer power on the Commissioner to assist an older person in Wales who is making a complaint or representation to or in respect of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, a person providing regulated services in Wales, or any other specified person⁸. The Commissioner may, in connection with any of his functions undertake or commission research, give assistance to another to undertake or commission research, carry out or commission the carrying out of educational activities, give assistance to another to carry out or commission the carrying out of educational activities⁹. Regulations may make provision for the examination by the Commissioner of the cases of particular persons who are or have been older people in Wales, in connection with the Commissioner's¹⁰. The Commissioner has power to issue a certificate to the High Court if he is satisfied that, without lawful excuse, a person has (i) obstructed him or a member of his staff in the exercise of any of his functions under regulations providing for the examination of particular cases or those giving him information gathering powers in respect of his review of arrangements function and his powers to examine particular cases; or (ii) done something in relation to an examination which would, if the examination were court proceedings, have been contempt of court¹¹. The Commissioner may issue guidance on best practice in connection with any matter relating to the interests of older people in Wales¹². The Commissioner or a person authorised by him has the power of entry and interviewing in certain circumstances¹³.

Further supplementary functions may be conferred on the Commissioner by regulations¹⁴.

1 Commissioner for Older People (Wales) Act 2006 s 1(1). For further provision about the Commissioner see Sch 1 (amended by SI 2007/1388). 'Older person' means a person aged 60 or over, and 'older person in Wales' means an older person who (1) is ordinarily resident in Wales, (2) to or in respect of whom regulated services in Wales are provided, or (3) to or in respect of whom relevant services are provided by or on behalf of, or under arrangements with, a person mentioned in the 2006 Act Sch 3: s 24. As to the appointment of the Commissioner, see the Commissioner for Older People in Wales (Appointment) Regulations 2007, SI 2007/396.

2 2006 Act s 2(1). Those powers are exercisable only in relation to fields in which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly government: s 2(2) (amended by SI 2007/1388). In considering what constitutes the interests of older people in Wales, the Commissioner must have regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991: Commissioner for Older People (Wales) Act 2006 s 25.

3 Ibid s 2(3) (amended by SI 2007/1388).

4 A 'relevant function' is (1) in the case of a person who is a family health service provider in Wales, a function dischargeable in relation to the provision of any of the family health services which the person has entered into a contract, undertaken, or made arrangements, to provide; (2) in the case of a person who is an independent provider in Wales, a function dischargeable in relation to the provision of any of the independently provided services which the person has made arrangements to provide; (3) in the case of any other person mentioned in the 2006 Act Sch 2, any function of the person: s 3(2).

5 See ibid Sch 2.

6 Ibid s 3(1) (amended by SI 2007/1388).

7 See 2006 Act ss 5, 6, Sch 3 (s 6 amended by SI 2007/1388).

8 See 2006 Act s 8, Sch 3 (s 8 amended by SI 2007/1388).

9 See 2006 Act s 9.

10 See ibid s 10 (amended by SI 2007/1388).

11 See 2006 Act s 11.

12 See ibid s 12 (amended by SI 2007/1388).

13 See 2006 Act s 13.

14 See ibid s 14 (amended by SI 2007/1388). As to further functions conferred on the Commissioner, see the Commissioner for Older People In Wales Regulations 2007, SI 2007/398 (amended by SI 2008/1512).

2. Miscellaneous

Regulations may make provision about the making by the Commissioner of reports following the discharge of any of his functions¹. The Commissioner is permitted to work jointly with the Public Services Ombudsman for Wales, and collaboratively with other ombudsmen, in specified circumstances². The Commissioner is under a duty not to disclose information obtained by him in the discharge of his functions, or from other commissioners or ombudsmen, other than for certain specified purposes³. The Commissioner is protected against defamation in certain circumstances⁴. The Commissioner must establish a procedure for the investigation of complaints made in respect of his actions or omissions relating to the discharge of his functions⁵.

1 See the Commissioner for Older People (Wales) Act 2006 s 15 (amended by SI 2007/1388).

2 See 2006 Act ss 16, 17 (both amended by SI 2007/1388).

3 See 2006 Act s 18 (amended by SI 2007/1388).

4 See 2006 Act s 19.

5 See ibid s 20 (amended by SI 2007/1388).

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1025. Arrangements for the care of mothers.

1025. Arrangements for the care of mothers.

A local social services authority¹ may with the approval of the Secretary of State², and to such extent as he may direct must, make arrangements for the care of expectant and nursing mothers, other than for the provision of residential accommodation for them³.

A local authority providing a service under these provisions may recover such charge, if any, as the authority considers reasonable⁴.

1 As to the meaning of 'local social services authority' see PARA 1005 ante.

2 As to the Secretary of State see PARA 1001 note 6 ante. The making of arrangements has been approved: see Department of Health Circular No LAC (93)10 Appendix 3. No circular or other guidance has been given as to the nature or extent of these services, which remain at the discretion of the local social services authority.

3 National Health Service Act 1977 s 21(1)(a) (amended by the Children Act 1989 s 108(7), Sch 15); National Health Service Act 1977 Sch 8 para 1(1) (amended by the Children Act 1989 Sch 15; and the National Health Service and Community Care Act 1990 s 66, Sch 9 para 18(14)). These arrangements are community care services: see PARA 1012 ante. As to the provision of accommodation see PARA 1029 et seq post.

As to mothers under the age of 18 see also the Children Act 1989 Pt III (ss 17-30) (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 844 et seq.

It is the duty of the Secretary of State to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements, such facilities for the care of expectant and nursing mothers as he considers are appropriate as part of the health service: see the National Health Service Act 1977 s 3(1)(d); and HEALTH SERVICES vol 54 (2008) PARA 12.

4 See the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante.

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1025 Arrangements for the care of mothers

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1026. Arrangements for prevention of illness, care and after-care.

1026. Arrangements for prevention of illness, care and after-care.

A local social services authority¹ may with the approval of the Secretary of State², and to such extent as he may direct³ must, make arrangements for the purpose of the prevention of illness⁴ and for the care of persons suffering from illness and for the after-care of persons who have been suffering⁵. Arrangements may be made in particular for: (1) the provision, for persons whose care is undertaken with a view to preventing them from becoming ill, persons suffering from illness and persons who have been so suffering, of centres or other facilities for training them or keeping them suitably occupied, and the equipment and maintenance of such centres⁶; (2) the provision, for the benefit of such persons, of ancillary or supplemental services⁷; and (3) the exercise of the functions of the authority in respect of persons suffering from mental disorder who are received into the guardianship of the local social services authority or of other persons⁸.

No such arrangements may provide for the payment of money to persons for whose benefit the arrangements are made, except for their remuneration if engaged in suitable work in accordance with the arrangements of such amounts as the local social services authority thinks fit in respect of their occasional personal expenses where it appears that no such payment would otherwise be made⁹.

No authority is authorised or may be required under these provisions to provide residential accommodation for any person¹⁰.

The Secretary of State may make regulations as to the conduct of premises in which, in pursuance of arrangements made under these provisions, facilities are provided for training or keeping suitably occupied persons whose care is undertaken with a view to preventing them from becoming sufferers from mental disorder or who are, or have been, so suffering¹¹.

A local authority providing a service under these provisions may recover such charge, if any, as the authority considers reasonable¹².

1 As to the meaning of 'local social services authority' see PARA 1005 ante.

2 As to the Secretary of State see PARA 1001 note 6 ante. See Department of Health Circular No LAC (93)10 Appendix 3 para 3(1), which approves the making by local authorities of arrangements for the purposes of the prevention of illness and the care of persons suffering from illness and for the after-care of persons who have been so suffering, and in particular (1) the provision of centres or other facilities for training such persons or keeping them suitably occupied and the equipment and maintenance of such centres; and (2) the provision of ancillary or supplemental services. Under Appendix 3 para 3(2), the Secretary of State further approves the making of arrangements for the provision of (a) meals to be served at centres or other facilities and meals-on-wheels for persons not otherwise provided for; (b) remuneration for persons engaged in suitable work at the centres or facilities provided by the authority; (c) services to prevent the impairment of the physical or mental health of adults in families where such impairment is likely, or for preventing the break-up of such families, or for assisting in their rehabilitation; (d) night-sitter services; (e) recuperative holidays; (f) facilities for social and recreational activities; and (g) services specifically for persons who are alcoholic or drug-dependent.

3 See Department of Health Circular No LAC (93)10 Appendix 3 para 3(2), which directs local authorities, for the purposes of the prevention of mental disorder or in relation to persons who are or who have been suffering from mental disorder, to make arrangements (1) for the provision of centres, including training and day centres, or other facilities, including domiciliary facilities, whether in premises managed by the local authority or otherwise, for the training or occupation of such persons; (2) for the appointment of sufficient social workers in their area to act as approved social workers for the purposes of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 427); (3) for the exercise of the functions of the authority in respect of persons suffering from mental disorder who are received into guardianship under the Mental Health Act 1983 Pt II (ss 2-

34) (as amended) or Pt III (ss 35-55) (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARAS 469 et seq, 486 et seq); and (4) for the provision of social work and related services to help in the identification, diagnosis, assessment and social treatment of mental disorder and to provide social work support and other domiciliary and care services to people living in their homes and elsewhere.

4 'Illness' includes mental disorder within the meaning of the Mental Health Act 1983 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 402), and any injury or disability requiring medical or dental treatment or nursing: National Health Service Act 1977 s 128(1) (amended by the Mental Health Act 1983 s 148, Sch 4 para 47(d)).

5 National Health Service Act 1977 s 21(1)(b), Sch 8 para 2(1). Such arrangements are community care services: see PARA 1012 ante.

These provisions do not apply to persons under the age of 18: Sch 8 para 2(4A) (added by the Children Act 1989 s 108(4), Sch 12 para 34).

A local social services authority neither has the power nor is subject to a duty to make arrangements under these provisions to provide facilities for any of the purposes mentioned in the Disabled Persons (Employment) Act 1944 s 15(1) (as amended) (see EMPLOYMENT vol 39 (2009) PARA 538): National Health Service Act 1977 Sch 8 para 2(1).

It is the duty of the Secretary of State to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements, such facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service: see s 3(1)(e); and HEALTH SERVICES vol 54 (2008) PARA 12.

6 Ibid Sch 8 para 2(1)(b).

7 Ibid Sch 8 para 2(1)(c).

8 Ie under the Mental Health Act 1983 Pt II (as amended) or Pt III (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARAS 469 et seq, 486 et seq): National Health Service Act 1977 Sch 8 para 2(1)(d) (substituted by the Mental Health Act 1983 Sch 4 para 47(e)).

9 National Health Service Act 1977 Sch 8 para 2(2) (amended by the Children Act 1989 s 108(7), Sch 15).

10 National Health Service Act 1977 Sch 8 para 2(4AA) (added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 18(14)). As to residential accommodation see PARA 1029 et seq post.

11 National Health Service Act 1977 Sch 8 para 2(3) (amended by the National Health Service and Community Care Act 1990 s 66(2), Sch 10). At the date at which this volume states the law, no such regulations had been made.

12 See the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante.

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1026 Arrangements for prevention of illness, care and after-care

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

No arrangements under the National Health Service Act 2006 Sch 20 para 2 may be given effect to in relation to a person to whom the Immigration and Asylum Act 1999 s 115 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 257) applies solely because he is destitute or because of the physical effects, or anticipated physical effects, of his being destitute: National Health Service Act 2006 Sch 20 para 2(6). For corresponding Welsh provision see National Health Service (Wales) Act 2006 Sch 15 para 2(6). The 1999 Act s 95(2)-(7) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 246) apply for the purposes of the National Health Service Act 2006 Sch 20 para 2(6); and for that purpose a reference to the Secretary of State in the 1999 Act s 95(4) or (5) is a reference to a local social services authority: National Health Service Act 2006 Sch 20 para 2(7) (not yet in force). For corresponding Welsh provision see National Health Service (Wales) Act 2006 Sch 15 para 2(7) (not yet in force).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1027. Home help and laundry facilities.

1027. Home help and laundry facilities.

Every local social services authority¹ must provide on such a scale as is adequate for the needs of its area, or arrange for the provision on such a scale as is so adequate, of home help for households where such help is required owing to the presence of a person who is suffering from illness, lying-in, an expectant mother, aged, or handicapped as a result of having suffered from illness or by congenital deformity².

Every such authority has the power to provide or arrange for the provision of laundry facilities for households for which home help is being, or may be, provided³.

A local authority providing a service under these provisions may recover such charge, if any, as the authority considers reasonable⁴.

1 As to the meaning of 'local social services authority' see PARA 1005 ante.

2 National Health Service Act 1977 s 21(1)(c), Sch 8 para 3(1) (amended by the Children Act 1989 s 108(7), Sch 15). Such facilities are community care services: see PARA 1012 ante. As to the obligation to provide practical assistance in the home of a disabled person under the Chronically Sick and Disabled Persons Act 1970 see PARA 1023 ante.

3 National Health Service Act 1977 s 21(1)(c), Sch 8 para 3(1) (as amended: see note 2 supra).

4 See the Health and Social Services and Social Security Adjudications Act 1983 s 17 (as amended); and PARA 1019 ante.

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1027 Home help and laundry facilities

TEXT AND NOTES--For consolidation of health service enactments see National Health Service Act 2006, National Health Service (Wales) Act 2006 and National Health Service (Consequential Provisions) Act 2006; and HEALTH SERVICES.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(2) WELFARE ARRANGEMENTS/1028. After-care for mentally disordered patients.

1028. After-care for mentally disordered patients.

It is the duty of the local social services authority¹ and of the health authority² to provide, in co-operation with relevant voluntary agencies, after-care services for certain mentally disordered patients³ until such time as the health authority and the local social services authority are satisfied that the person concerned is no longer in need of such services⁴.

Local social services authorities have no power to charge for the provision of these services⁵.

1 le the local social services authority for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained: Mental Health Act 1983 s 117(3) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt III para 107(1), (8)). As to the meaning of 'local social services authority' see PARA 1005 ante (definition applied by the Mental Health Act 1983 s 145(1)).

2 'The health authority' is the health authority for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained: *ibid* s 117(3) (as amended: see note 1 *supra*).

3 le persons who are detained under *ibid* s 3, or admitted to hospital in pursuance of a hospital order made under s 37 (as prospectively amended), or transferred to a hospital in pursuance of a transfer direction made under s 47 (as prospectively amended) or s 48, and then cease to be detained and (whether or not immediately after so ceasing) leave hospital: s 117(1) (amended by the Mental Health (Patients in the Community) Act 1995 s 2(1), Sch 1 para 15). As from a day to be appointed, persons who are transferred to a hospital in pursuance of a hospital direction made under the Mental Health Act 1983 s 45A (as added) and then cease to be detained and leave hospital are to be included in this provision: see s 117(1) (prospectively amended by the Crime (Sentences) Act 1997 s 55, Sch 4 para 12(1), (17)). As to detention, hospital orders, and transfer directions see MENTAL HEALTH.

4 Mental Health Act 1983 s 117(2) (amended by the Health Authorities Act 1995 Sch 1 Pt III para 107(1), (8)). The authorities are not to be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject: Mental Health Act 1983 s 117(2) (amended by the Mental Health (Patients in the Community) Act 1995 Sch 1 para 15). See also MENTAL HEALTH vol 30(2) (Reissue) PARA 428.

The local authority is entitled to take into consideration the funds available when identifying an appropriate level of service provision: *R v Hertfordshire County Council, ex p Three Rivers District Council* (1992) 90 LGR 526.

The duty under the Mental Health Act 1983 s 117 (as amended) is a specific duty, owed to each individual to whom s 117 (as amended) applies, to consider his needs and to provide after-care services; and the duty is a continuing duty in respect of any patient who may be discharged and falls within s 117(1) (as amended): see *R v Ealing District Health Authority, ex p Fox* [1993] 3 All ER 170, [1993] 1 WLR 373. Advice on the implementation of the Mental Health Act 1983 s 117 (as amended) is contained in the Mental Health Act 1983 Code of Practice paras 27.1-27.11.

After-care services for mentally disordered patients are community care services: see PARA 1012 ante.

As to the general duty to provide after-care facilities see PARA 1026 ante; and as to the duty to co-operate with health authorities see HEALTH SERVICES vol 54 (2008) PARA 231.

5 After-care services provided under the Mental Health Act 1983 s 117 (as amended) are not included in the list of services for which charges may be imposed (see PARA 1019 ante). Local authorities cannot rely on the Local Government Act 1972 s 111 (which gives a local authority power to do things incidental to the discharge of any of its functions: see LOCAL GOVERNMENT vol 69 (2009) PARA 462) as conferring a power to charge: *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL (charges for pre-application planning consultations).

UPDATE

1020-1028 Welfare Arrangements

As to the power of the Secretary of State and the National Assembly for Wales to pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, welfare services see the Local Government Act 2000 s 93 (amended by the Adoption and Children Act 2002 s 136). See also Welfare Reform Act 2007 ss 42, 43 (information relating to certain benefits; unlawful disclosure of certain information); the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008, SI 2008/2112; and the Welfare Reform Act (Relevant Enactment) (Wales) Order 2009, SI 2009/2687.

As to the office of the Commissioner for Older People in Wales and his role of ensuring that the interests of older people in Wales are safeguarded and promoted, see the Commissioner for Older People (Wales) Act 2006; and PARA 1024A.

1028 After-care for mentally disordered patients

TEXT AND NOTES--The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the Mental Health Act 1983 s 117 or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

TEXT AND NOTES 2-4--References to health authority now to local health board: 1983 Act s 117(2), (3) (amended by SI 2007/961). 'Local health board' means a local health board established under the National Health Services (Wales) Act 2006: 1983 Act s 145(1) (definition added by SI 2007/961).

NOTE 4--References to after-care services provided for a patient under the Mental Health Act 1983 s 117 include references to services provided for the patient in respect of which direct payments are made under regulations under the Health and Social Care Act 2001 s 57 or the National Health Service Act 2006 s 12A(4), and which would be provided under the Mental Health Act 1983 s 117 apart from the regulations: s 117(2C) (added by the Health Act 2009 Sch 1 para 3).

NOTE 5--No charge may be made for the services required under s 117: *R (on the application of Stennett) v Manchester CC*; *R (on the application of Armstrong) v Redcar and Cleveland BC*; *R (on the application of Cobham) v Harrow LBC* [2002] UKHL 34, [2002] 4 All ER 124.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1029. Duty of local authorities to provide accommodation.

(3) RESIDENTIAL ACCOMMODATION

1029. Duty of local authorities to provide accommodation.

A local authority¹ may with the approval of the Secretary of State², and to such extent as he may direct³ must, make arrangements for providing residential accommodation (1) for persons aged 18 or over who by reason of age, illness, disability or any other circumstances⁴ are in need of care and attention which is not otherwise available to them⁵; and (2) for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them⁶.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 As to the Secretary of State see PARA 1001 note 6 ante. The Secretary of State has approved the making of arrangements by local authorities to provide residential accommodation (1) in relation to persons aged 18 or over who have no settled residence and who are by reason of age, illness, disability or any other circumstance in need of care and attention not otherwise available to them; (2) to the extent that the local authority considers desirable, in relation to persons aged 18 or over who are ordinarily resident in the area of another local authority and who are by reason of age, illness, disability or any other circumstance in need of care and attention not otherwise available to them, with the consent of that other authority; (3) subject to the National Assistance Act 1948 s 24(4) (as amended) (see PARA 1032 post), in relation to persons who are or have been suffering from mental disorder or for the purposes of the prevention of mental disorder, for persons who are ordinarily resident in the area of another local authority but who following discharge from hospital have become resident in the authority's area; (4) to meet the needs of persons for the prevention of illness, the care of those suffering from illness and the after-care of those so suffering; (5) specifically for persons who are alcoholic or drug-dependent: see Department of Health Circular LAC (93)10 Appendix 1 para 2(1)(a), (4)-(6).

The Secretary of State has also approved the making by local authorities of arrangements to provide residential accommodation (in particular mother and baby homes) for expectant and nursing mothers of any age who are in need of care and attention which is not otherwise available to them: see Department of Health Circular No LAC (93)10 Appendix 1 para 3.

3 The Secretary of State has directed the making of arrangements by each local authority to provide residential accommodation (1) in relation to persons aged 18 or over who are ordinarily resident in the local authority's area and who by reason of age, illness, disability or any other circumstance are in need of care and attention not otherwise available to them; (2) in relation to other persons aged 18 or over who are ordinarily resident in the authority's area and who by reason of age, illness, disability or any other circumstance are in need of care and attention not otherwise available to them and who are in urgent need thereof; (3) on a temporary basis, for persons who are in urgent need thereof in circumstances where the need for that accommodation could not reasonably have been foreseen; (4) in relation to persons who are or have been suffering from mental disorder and who are ordinarily resident in the authority's area or are persons with no settled residence and who are in the authority's area; (5) for the purposes of the prevention of mental disorder, for persons who are ordinarily resident in the authority's area or are persons with no settled residence and who are in the authority's area: Department of Health Circular LAC (93)10 Appendix 1 para 2(1)(b), (2)-(3).

4 'Any other circumstances' are not limited to circumstances relating to the physical condition of the individual seeking assistance; the ejusdem generis rule does not apply to 'any other circumstances', and that phrase is broad enough to be capable of applying to persons who had applied for asylum after entry to the United Kingdom and who were excluded from the right to income support or housing benefit pursuant to the Asylum and Immigration Act 1996: *R v Hammersmith and Fulham London Borough Council, ex p M* (1997) Times, 19 February, CA. A local authority is empowered only to make provision for asylum seekers in kind, and cannot make cash payments in lieu: *R v Secretary of State for Health, ex p Hammersmith and Fulham London Borough Council* (1997) Times, 31 July. A local authority has no power or duty under the National Assistance Act 1948 s 21 (as amended) to provide food vouchers for asylum seekers who are in need of care and attention unless they are also being provided by the authority with residential accommodation: *R v Newham London Borough Council, ex p Gorenkin* (1997) Times, 9 June. As to asylum see BRITISH NATIONALITY, IMMIGRATION AND

ASYLUM vol 4(2) (2002 Reissue) PARA 238. As to income support, child benefit and jobseeker's allowance for asylum seekers see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 200 note 1, 251 note 5, 322 note 2.

5 National Assistance Act 1948 s 21(1)(a) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(1); the Children Act 1989 s 108(5), Sch 13 para 11(1); and the National Health Service and Community Care Act 1990 s 42(1)).

A local authority is entitled to take into account its limited resources when assessing whether a person seeking accommodation under the National Assistance Act 1948 s 21(1)(a) (as amended) is in need of care and attention; but, if the authority decides that a person is in such need, it is under an obligation to make arrangements for accommodation to be made available for that person and a lack of resources is no excuse: *R v Sefton Metropolitan Borough Council, ex p Help the Aged* [1997] 4 All ER 532, CA. Care and attention is not to be regarded as 'otherwise available' if the person concerned is unable to pay for it according to the means test regime: *R v Sefton Metropolitan Borough Council, ex p Help the Aged* supra. As to the means test regime see the National Assistance Act 1948 s 22 (as amended); and PARAS 1035-1036 post.

A local authority may discharge its statutory duty entirely by means of arrangements made with third parties and is not required to maintain some accommodation in premises under its own management: *R v Wandsworth London Borough Council, ex p Beckwith* [1996] 1 All ER 129, [1996] 1 WLR 60, HL. For arrangements with voluntary organisations or any other person who is not a local authority see PARA 1033 post.

6 National Assistance Act 1948 s 21(1)(aa) (added by the National Health Service and Community Care Act 1990 s 42(1)). See also note 5 supra.

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1029 Duty of local authorities to provide accommodation

TEXT AND NOTES 4, 5--A person to whom the Immigration and Asylum Act 1999 s 115 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 257) applies may not be provided with residential accommodation under head (1) in the TEXT if his need for care and attention has arisen solely because he is destitute or because of the physical effects, or anticipated physical effects, of his being destitute: National Assistance Act 1948 s 21(1A) (added by the Immigration and Asylum Act 1999 s 116).

The 1999 Act s 95(3), (5)-(8), Sch 8 para 2 (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 246-248) apply for the purposes of the 1948 Act s 21(1A) as they apply for the purposes of the 1999 Act s 95, but the references in s 95(5), (7), Sch 8 para 2 to the Secretary of State are replaced with references to a local authority: National Assistance Act 1948 s 21(1B) (added by the Immigration and Asylum Act 1999 s 116). However, a local authority may have to provide accommodation under the 1948 Act s 21 to avoid breach of the Convention rights of person subject to immigration control: *R (on the application of AW) v Croydon LBC*; *R (on the application of A, D and Y) v Hackney LBC* [2007] EWCA Civ 266, [2007] LGR 417.

NOTE 4--*R v Hammersmith and Fulham LBC, ex p M*, cited, reported at (1997) 30 HLR 10. *R v Secretary of State for Health, ex p Hammersmith and Fulham*, cited, affirmed: [1999] LGR 354, CA. A local authority in Scotland may not take into account a person's capital when assessing whether he is in need of residential accommodation: *Robertson v Fife Council* [2002] UKHL 35, (2002) 68 BMLR 229.

TEXT AND NOTES 5, 6--In determining for the purposes of the National Assistance Act 1948 s 21(1)(a) or (aa) whether care and attention are otherwise available to a person, a local authority must disregard so much of the person's resources as may be specified in, or determined in accordance with, regulations made by the Secretary of State for the purposes of this provision: s 21(2A) (s 21(2A), (2B) substituted by Health and Social Care Act 2001 s 53). See the National Assistance (Residential Accommodation) (Disregarding of Resources) (England) Regulations 2001, SI 2001/3067 and the National Assistance (Residential Accommodation) (Disregarding of Resources) (Wales) Regulations 2003, SI 2003/969. In the National Assistance Act 1948 s 21(2A) the reference to a person's resources is a reference to his resources within the meaning of regulations made for the purposes of s 21(2A): s 21(2B).

NOTE 5--A person who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with that person under the National Assistance Act 1948 s 21(1)(a) is to be taken for the purposes of the Human Rights Act 1998 s 6(3)(b) to be exercising a function of a public nature in doing so: Health and Social Care Act 2008 s 145 (in force in part: SI 2008/2994).

See *R v Newham LBC, ex p Plastin* (1997) 30 HLR 261 (able-bodied, unemployed, impecunious and homeless person not 'in need of care and attention'). The decision in *R v Sefton MBC, ex p Help the Aged*, cited, is reflected in the Community Care (Residential Accommodation) Act 1998, which inserts the 1948 Act s 21(2A), to provide that a local authority, when determining for the purposes of s 21(1)(a) or (aa) whether care and attention are otherwise available to a person, must disregard so much of the person's capital as does not exceed the capital limit for the purposes of the 1948 Act s 22. Section 21(2B), as so inserted, provides for the method of calculating the person's capital. The 1948 Act s 21(2A), (2B) is now substituted: see TEXT AND NOTES 5, 6. See also *R v Lambeth LBC, ex p Sarhangi* [1999] LGR 641 (person overstaying in United Kingdom owing to complications with his deportation order entitled to assistance); and *R v Brent LBC, ex p D* (1999) 31 HLR 10 (HIV positive illegal overstayer entitled to assistance as not fit to travel). While s 21(1) places a local authority under a duty to provide accommodation on a continuous basis, that duty is not absolute, and can be considered discharged if the applicant persistently refuses to co-operate with the authority: *R v Kensington and Chelsea LBC, ex p Kujtim* [1999] 4 All ER 161, CA. Where accommodation satisfying the requirements of the person in need of care and attention is refused, there is no duty on the part of the authority to provide alternative accommodation preferred by the applicant: *Khana v Southwark LBC* [2001] EWCA Civ 989, [2002] HLR 596. Cf *R v Islington LBC, ex p Batantu* (2001) 33 HLR 871 (authority's duty under s 21 not discharged by applicant's refusal to contemplate short-let private-

sector accommodation). It is not sufficient for an applicant to show that he is destitute: *R v Southwark LBC, ex p Hong Cui* (1999) 31 HLR 639. If a person's need for care and attention is made more acute by some circumstance other than the mere lack of accommodation and funds, that person, despite being subject to immigration control, qualifies for assistance: *R v Wandsworth LBC, ex p O*; *R v Leicester CC, ex p Bhikha* [2000] 4 All ER 590, CA. A local authority has a duty to provide residential accommodation for a destitute asylum-seeker who suffers a disability which, of itself, gives rise to a need for care and attention but falls short of requiring provision of residential accommodation: *R (on the application of Mani) v Lambeth LBC* [2003] EWCA Civ 836, [2004] HLR 51. A local authority is under a duty to provide accommodation for a destitute asylum seeker who is in need of care and attention and whose need for accommodation arises from infirmity, not solely destitution: *R (on the application of Westminster CC) v National Asylum Support Service* [2002] UKHL 38, [2002] 4 All ER 654; *R (on the application of O) v Haringey LBC* [2004] EWCA Civ 535, [2004] 2 FCR 219 (although an authority is not obliged to provide accommodation for such a person's children). See *R (on the application of M) v Slough BC* [2008] UKHL 52, [2008] 1 WLR 1808, [2008] All ER (D) 412 (Jul) (absence of somewhere to live, coupled with requirement for medication, refrigerator use for medication and access to a doctor, did not amount to a 'need for care and attention'). The need for care and attention does not have to be one for nursing or personal care, 24-hour residential care or a full-time carer, but may extend to a need for someone to assist with, or perform, tasks that an applicant cannot, or should not have to, cope with alone; the question to be addressed is whether he needs the care and attention at the present time, even if only to a small degree; it is irrelevant that his position may improve in the future: *R (on the application of Zarzour) v Hillingdon LBC* [2009] All ER (D) 03 (May).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1030. Arrangements for residential accommodation.

1030. Arrangements for residential accommodation.

In making any arrangements for residential accommodation¹ a local authority² must have regard to the welfare of all persons for whom accommodation is provided³, and in particular to the need for providing accommodation of different descriptions suited to different descriptions of persons⁴.

A local authority may (1) provide, in such cases as it considers appropriate, for the conveyance of persons to and from premises in which accommodation is provided for them⁵; (2) make arrangements for the provision on the premises in which accommodation is being provided of such other services as appear to it to be required⁶.

Accommodation provided by a local authority⁷ must be provided in premises managed by the authority or, to such extent as may be determined⁸, in such premises managed by another local authority as may be agreed between the two authorities and on such terms, including terms as to the reimbursement of expenditure incurred by the other authority, as may be agreed⁹.

Nothing in these provisions¹⁰ authorises or requires a local authority to make any provision authorised or required to be made, whether by that or by any other authority, by or under any enactment not contained in Part III of the National Assistance Act 1948 or authorised or required to be provided under the National Health Service Act 1977¹¹.

1 le under the National Assistance Act 1948 s 21(1) (as amended) (see PARA 1029 ante).

2 As to the meaning of 'local authority' see PARA 1005 ante.

3 References in the National Assistance Act 1948 to accommodation provided under Pt III (ss 21-36) (as amended) are to be construed as references to accommodation provided in accordance with ss 21, 22 (both as amended), ss 23, 24, 26 (ss 24, 26 as amended) (see PARAS 1029 ante, 1031 et seq post), and as including references to board and other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority managing the premises their provision is unnecessary: s 21(5).

4 le such persons as are mentioned in PARA 1029 ante: National Assistance Act 1948 s 21(2) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(1)). As to the consideration of resources see *R v Sefton Metropolitan Borough Council, ex p Help the Aged* [1997] 4 All ER 532, CA; and PARA 1029 note 5 ante.

The Secretary of State has directed local authorities to make arrangements in relation to persons provided with accommodation under the National Assistance Act 1948 s 21 (as amended) for all or any of the following purposes: (1) the welfare of all persons for whom that accommodation is provided; (2) the supervision of the hygiene of that accommodation; (3) to enable the persons provided with the accommodation to obtain medical attention, nursing attention during illnesses of a kind which are ordinarily nursed at home and the benefit of any services provided by the National Health Service of which those persons may from time to time be in need; (4) the provision of board and such other services, amenities and requisites provided in connection with the accommodation except where in the opinion of the authority managing the premises their provision is unnecessary; (5) to review regularly the provision made under the arrangements and to make such improvements as the local authority considers necessary: Department of Health Circular LAC (93)10 Appendix 1 para 4. For the purposes of heads (2) and (5) supra, the Secretary of State has made directions for the inspection by local authorities of residential accommodation: see Inspection Units Directions issued as Department of Health Circular No LAC (94)16 Annex A.

As to the Secretary of State see PARA 1001 note 6 ante.

5 National Assistance Act 1948 s 21(7)(a). As to the making of financial adjustments between local authorities where a local authority provides for the conveyance of a person ordinarily resident in the area of another local authority see PARA 1009 ante.

6 Ibid s 21(7)(b) (amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 5(2)).

7 le in the exercise of its functions under the National Assistance Act 1948 s 21 (as amended).

8 le determined in accordance with the arrangements made under ibid s 21 (as amended).

9 Ibid s 21(4) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(1); and the National Health Service and Community Care Act 1990 Sch 9 para 5(1)). This provision is subject to the National Assistance Act 1948 s 26 (as amended) (see PARA 1033 post).

Where a local authority agrees with another local authority for the provision of accommodation in premises managed by that other local authority, references in the National Assistance Act 1948 to a local authority providing accommodation must be construed as references to the first mentioned local authority: s 21(6).

10 le ibid s 21 (as amended).

11 Ibid s 21(8) (amended by the National Health Service and Community Care Act 1990 s 66(2), Sch 9 para 5(3), Sch 10).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1030 Arrangements for residential accommodation

NOTES 1-4--'Residential accommodation' means no more than where a person lives; board and other services can be provided separately to the accommodation: *R v Newham LBC, ex p Medical Foundation of The Care of Victims of Torture* (1997) 30 HLR 955. Failure by a local authority to inform claimants of their right to be accommodated in their 'preferred accommodation', as directed by the Secretary of State in the National Assistance Act (Choice of Accommodation) Directions 1992 para 2, is not open to judicial review: *R v Westminster CC, ex p P* (1999) 31 HLR 154, CA.

TEXT AND NOTE 11--In 1948 Act s 21(8) for 'the National Health Service Act 1977' read 'the National Health Service Act 2006 or the National Health Service (Wales) Act 2006': National Health Service (Consequential Provisions) Act 2006 Sch 1 para 6.

NOTE 11--See *R (on the application of Hughes) v Liverpool CC* [2005] EWHC 428 (Admin), [2005] LGR 531 (local authority not authorised to provide accommodation specially adapted for person with severe mental and physical disabilities under the Housing Act 1996 Pt VII (ss 175-218) (see HOUSING vol 22 (2006 Reissue) PARAS 275-302)).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1031. Management of premises in which accommodation is provided.

1031. Management of premises in which accommodation is provided.

A local authority¹ may make rules as to the conduct of premises under its management in which accommodation is provided under the National Assistance Act 1948² and as to the preservation of order in the premises³. Those rules may provide (1) that where by reason of any change in a person's circumstances he is no longer qualified to receive such accommodation or where a person has otherwise become unsuitable, he may be required by the local authority managing the premises to leave them⁴; and (2) for the waiving of part of the payments due⁵ where, in compliance with the rules, persons for whom accommodation is provided assist in the running of the premises⁶.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Ie under the National Assistance Act 1948 Pt III (ss 21-36) (as amended). See PARA 1030 note 3 ante.

3 Ibid s 23(1). As to inspection of premises used for provision of community care services see PARA 1014 ante. As to the power of an approved social worker to enter and inspect premises where a mentally disordered person is living see MENTAL HEALTH vol 30(2) (Reissue) PARA 427.

4 See ibid s 23(2).

5 Ie under ibid s 22 (as amended) (see PARA 1035 post).

6 Ibid s 23(3).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial

Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1032. Authority liable for provision of accommodation.

1032. Authority liable for provision of accommodation.

The local authority¹ empowered to provide residential accommodation² for any person is the authority in whose area the person is ordinarily resident³. However, where a person in the area of a local authority (1) is a person with no settled residence; or (2) not being ordinarily resident in the area of the local authority, is in urgent need of residential accommodation⁴, the authority has the like power to provide residential accommodation for him as if he were ordinarily resident in its area⁵.

Subject to and in accordance with the arrangements made under the National Assistance Act 1948⁶, a local authority has power, as respects a person ordinarily resident in the area of another local authority, with the consent of that other authority to provide residential accommodation for him in any case where the authority would have a duty to provide such accommodation if he were ordinarily resident in its own area⁷.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Under the National Assistance Act 1948 Pt III (ss 21-36) (as amended). See PARA 1030 note 3 ante.

3 Ibid s 24(1) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(2)).

Any question arising under the National Assistance Act 1948 Pt III (as amended) as to the ordinary residence of a person must be determined by the Secretary of State: s 32(3). Section 32(3) refers to the Minister of Health (see s 35(1)), whose functions have been transferred to the Secretary of State for Health, and references to the minister are to be read as references to the Secretary of State: see the Secretary of State for Social Services Order 1968, SI 1968/1699; and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State see PARA 1001 note 6 ante. As to the procedure to be adopted when referring matters to the Secretary of State for determination see Department of Health Circular LAC (93)7. As to ordinary residence see also *Shah v Barnet London Borough Council* [1983] 2 AC 309 at 343, [1983] 1 All ER 226 at 235, HL, per Lord Scarman; and *Levene v IRC* [1928] AC 217 at 232, HL, per Lord Warrington of Clyffe.

Where a person is provided with residential accommodation under the National Assistance Act 1948 Pt III (as amended), he is deemed for the purposes of that Act to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided for him: s 24(5). For the purposes of the provision of residential accommodation under Pt III (as amended), a patient in a hospital vested in the Secretary of State or an NHS trust is deemed to be ordinarily resident in the area, if any, in which he was ordinarily resident immediately before he was admitted as a patient to the hospital, whether or not he in fact continues to be ordinarily resident in that area: s 24(6) (added by the National Assistance (Amendment) Act 1959 s 1(1); and amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 5(4)). 'Hospital' has the meaning assigned to it by the National Health Service Act 1946 s 79 (repealed: see now the National Health Service Act 1977 s 128; and HEALTH SERVICES vol 54 (2008) PARA 12); National Assistance Act 1948 s 64(1). 'NHS trust' means a National Health Service trust established under the National Health Service and Community Care Act 1990 Pt I (ss 1-26) (as amended): National Assistance Act 1948 s 24(7) (added by the National Health Service and Community Care Act 1990 Sch 9 para 5(4)); and see HEALTH SERVICES vol 54 (2008) PARA 155 et seq.

A person engaged in work in a workshop provided under the National Assistance Act 1948 s 29(4)(c) (as amended) (see PARA 1021 head (3) ante), or a person in receipt of a superannuation allowance granted on his retirement from engagement in any such workshop, is deemed for the purposes of the National Assistance Act 1948 to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before he was accepted for work in that workshop; and for this purpose a course of training in such a workshop is deemed to be work in that workshop: s 29(7) (amended by the National Assistance (Amendment) Act 1959 s 1(2)).

The retrospective amendments made by the National Assistance (Amendment) Act 1959 do not authorise the recovery by any local authority from any other local authority after 30 April 1959 of any expenditure incurred before that date: s 1(3).

- 4 le under the National Assistance Act 1948 Pt III (as amended).
- 5 Ibid s 24(3) (amended by the Local Government Act 1972 Sch 23 para 2(2)).
- 6 le under the National Assistance Act 1948 s 21 (as amended) (see PARAS 1029-1030 ante).
- 7 Ibid s 24(4) (amended by the Local Government Act 1972 Sch 23 para 2(2)).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1032 Authority liable for provision of accommodation

NOTE 3--National Assistance Act 1948 s 24(6), (7) substituted by s 24(6), (6A), (6B): Health and Social Care Act 2008 s 148; and the Health Act 2009 Sch 1 para 1.

'Ordinarily resident' in the National Assistance Act 1948 s 24 means settled presence in a particular place other than under compulsion: *R (on the application of JM) v Hammersmith and Fulham LBC*; *R (on the application of Hertfordshire CC) v Hammersmith and Fulham LBC* [2010] EWHC 562 (Admin), [2010] All ER (D) 218 (Mar).

NOTE 5--Physical presence rather than actual residence in the area suffices: *R (on the application of S) v Lewisham LBC* [2008] All ER (D) 195 (May).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1033. Provision of accommodation in premises maintained by voluntary organisations.

1033. Provision of accommodation in premises maintained by voluntary organisations.

Arrangements for the provision of residential accommodation¹ may include arrangements made with a voluntary organisation² or with any other person who is not a local authority³ where (1) that organisation or person manages premises which, for reward, provide accommodation⁴; and (2) the arrangements are for the provision of accommodation⁵ in those premises⁶. If they are for the provision of residential accommodation with both board and personal care⁷ for certain persons⁸, any such arrangements made with any voluntary organisation or other person must be arrangements for the provision of that accommodation in a residential care home⁹ which (a) is managed by the organisation or person in question; and (b) is a home in respect of which that organisation or person is registered under the Residential Homes Act 1984¹⁰ or is not required¹¹ to be so registered¹². If arrangements are made with any voluntary organisation or other person for the provision of residential accommodation where nursing care is provided, they must be arrangements for the provision of that accommodation in premises (i) which are managed by the organisation or person in question; and (ii) in respect of which that organisation or person is registered under the Registered Homes Act 1984¹³ or which, by reason only of being maintained or controlled by an exempt body, are not within the definition of a nursing home¹⁴.

No arrangements may be made with a person who has been convicted of an offence under the registration provisions¹⁵.

Any arrangements made¹⁶ with a voluntary organisation or any other person who is not a local authority must provide for the making by the local authority to the other party of payments in respect of the accommodation provided at rates determined by or under the arrangements¹⁷. The local authority must recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make¹⁸.

Where in any premises accommodation is being provided in accordance with arrangements made¹⁹ by a local authority, any person authorised in that behalf by the authority may at all reasonable times enter and inspect the premises²⁰.

1 I.e. arrangements under the National Assistance Act 1948 s 21 (as amended) (see PARAS 1029-1030 ante).

2 For the meaning of 'voluntary organisation' generally see PARA 1022 note 4 ante. For the purposes of *ibid* s 26 (as amended), 'voluntary organisation' includes a housing association: s 26(7). As to housing associations see HOUSING vol 22 (2006 Reissue) PARA 11.

3 As to the meaning of 'local authority' see PARA 1005 ante.

4 I.e. accommodation falling within the National Assistance Act 1948 s 21(1)(a) (as amended) or s 21(1)(aa) (as added) (see PARAS 1029-1030 ante). References to accommodation provided under the National Assistance Act 1948 s 26 (as amended) include references to board and other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority making the arrangements their provision is unnecessary: see s 21(5) (see PARA 1030 ante); s 26(4A) (added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 5(5)(b)).

5 See note 4 *supra*.

6 National Assistance Act 1948 s 26(1) (substituted by the Community Care (Residential Accommodation) Act 1992 s 1(1)).

A local authority may discharge its statutory duty entirely by means of arrangements made with third parties and is not required to maintain some accommodation in premises under its own management: *R v Wandsworth London Borough Council, ex p Beckwith* [1996] 1 All ER 129, [1996] 1 WLR 60, HL; and see PARA 1029 note 5 ante.

7 For the meaning of 'personal care' see PARA 1042 note 4 post (definition applied by the National Assistance Act 1948 s 26(1A) (as substituted: see note 12 infra)).

8 Ie such persons as are mentioned in PARA 1042 post.

9 As to the meaning of 'residential care home' see PARA 1042 post (definition applied by the National Assistance Act 1948 s 26(1A) (as substituted: see note 12 infra)).

10 Ie the Registered Homes Act 1984 Pt I (ss 1-20) (as amended). As to such registration see PARA 1042 et seq post.

11 Ie is not required to be registered by virtue of *ibid* s 1(4)(a) or s 1(4)(b) (see PARA 1042 head (1) post) or by virtue of the home being managed or provided by an exempt body: see the National Assistance Act 1948 s 26(1A) (as substituted: see note 12 infra). 'Exempt body' means an authority or body constituted by an Act of Parliament or incorporated by royal charter: s 26(7) (added by the National Health Service and Community Care Act 1990 s 42(5); and amended by the Registered Homes (Amendment) Act 1991 s 2(5)(b)).

12 National Assistance Act 1948 s 26(1A) (substituted by the Community Care (Residential Accommodation) Act 1992 s 1(1)).

13 Ie the Registered Homes Act 1984 Pt II (ss 21-38) (repealed).

14 Ie the definition in *ibid* s 21 (repealed): National Assistance Act 1948 s 26(1B) (added by the Community Care (Residential Accommodation) Act 1992 s 1(1)).

No such arrangements may be made by an authority for the accommodation of any person without the consent of such health authority as may be determined in accordance with regulations: National Assistance Act 1948 s 26(1C) (added by the Community Care (Residential Accommodation) Act 1992 s 1(1); and amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt III para 87(1), (2)). As to the relevant health authority see the Residential Accommodation (Determination of District Health Authority) Regulations 1992, SI 1992/3182 (as amended). The arrangements for giving consent are set out in Department of Health Circular LAC 92(22) PARAS 5-7.

The National Assistance Act 1948 s 26(1C) (as added and amended) does not apply to the making of temporary arrangements for the accommodation of any person as a matter of urgency; but, as soon as practicable after any such temporary arrangements have been made, the authority must seek the consent required to the making of appropriate arrangements for the accommodation of the person concerned: s 26(1D) (added by the Community Care (Residential Accommodation) Act 1992 s 1(1)).

15 Ie an offence under any provision of the Registered Homes Act 1984 (repealed) or any enactment replaced by that Act, or regulations made under s 16 (see PARA 1055 post) or s 26 or under any corresponding provisions of any such enactment: National Assistance Act 1948 s 26(1E) (added by the Community Care (Residential Accommodation) Act 1992 s 1(1)).

16 Ie under the National Assistance Act 1948 s 26 (as amended).

17 *Ibid* s 26(2) (amended by the Health Services and Public Health Act 1968 s 44(2); the Local Government Act 1972 s 195(6), Sch 23 para 2(3); and the National Health Service and Community Care Act 1990 s 42(3) (as amended); s 66, Sch 9 para 5(5)(a), Sch 10).

Payments by the local authority to the voluntary organisation or other person are an integral and a necessary part of the arrangements, and if the arrangements do not include a payment provision to satisfy the National Assistance Act 1948 s 26(2) (as amended) then residential accommodation within the meaning of Pt III (ss 21-36) (as amended) (see PARA 1030 note 3 ante) is not provided: see *Quinn v Chief Adjudication Officer* [1996] 1 WLR 1184 at 1192, HL, per Lord Slynn of Hadley; *Steane v Chief Adjudication Officer* [1996] 1 WLR 1195, HL.

18 National Assistance Act 1948 s 26(2) (as amended: see note 17 supra). As to the refund see PARA 1035 post.

19 Ie under *ibid* s 26 (as amended).

20 *Ibid* s 26(5) (amended by the National Health Service and Community Care Act 1990 Sch 9 para 5(5)(c), Sch 10). A person who proposes to exercise any power of entry or inspection conferred by the National Assistance Act 1948 must if required produce some duly authenticated document showing his authority to

exercise that power: s 55(1). Any person who obstructs the exercise of any such power is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 55(2) (amended by the Criminal Law Act 1977 s 31, Sch 6; and the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 1014 note 11 ante.

As to inspection of premises used for provision of community care services see PARA 1014 ante. As to the power of an approved social worker to enter and inspect premises where a mentally disordered person is living see MENTAL HEALTH vol 30(2) (Reissue) PARA 427.

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1033 Provision of accommodation in premises maintained by voluntary organisations

TEXT AND NOTES--A person who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with that person under the National Assistance Act 1948 s 26 is to be taken for the purposes of the Human Rights Act 1998 s 6(3)(b) to be exercising a function of a public nature in doing so: Health and Social Care Act 2008 s 145 (in force in part: see SI 2008/2994).

NOTES 7, 14--National Assistance Act 1948 s 26(1A), (1B) now s 26(1A) (substituted by the Care Standards Act 2000 Sch 4 para 1).

NOTES 10-14--Registered Homes Act 1984 replaced by Care Standards Act 2000.

NOTE 14--Now refers to the consent of such primary care trust or local health board: 1948 Act s 26(1C) (amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 para 38; and the References to Health Authorities Order 2007, SI 2007/961). SI 1992/3182 further amended by SI 2002/2469 to take account of primary care trusts. As to primary care trusts see HEALTH SERVICES vol 54 (2008) PARA 111 et seq.

NOTE 15--National Assistance Act 1948 s 26(1E) repealed: Care Standards Act 2000 Sch 6.

NOTE 17--There is no onus on a local authority to establish that the fees payable to a third party in respect of the provision of accommodation are fair or reasonable: *R (on the application of Birmingham Care Consortium) v Birmingham CC* [2002] EWHC 2118 (Admin), [2003] LGR 119.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1034. Exclusion of powers to provide accommodation in certain cases.

1034. Exclusion of powers to provide accommodation in certain cases.

No accommodation may be provided¹ for any person who immediately before 1 April 1993² was ordinarily resident³ in relevant premises⁴. The Secretary of State may by regulations provide that, in such cases and subject to such conditions as may be prescribed, this provision is not to apply in relation to such classes of persons as may be prescribed in the regulations⁵.

The validity of any contract made before 1 April 1993 for the provision of accommodation on or after that date or anything done in pursuance of such a contract is not affected by this provision⁶.

1 le under the National Assistance Act 1948 s 21 (as amended) (see PARAS 1029-1030 ante) or s 26 (as amended) (see PARA 1033 ante).

2 le the date on which *ibid* s 26A (as added) came into force: see the National Health Service and Community Care Act 1990 (Commencement No 10) Order 1992, SI 1992/2975.

3 The Secretary of State must by regulations prescribe the circumstances in which persons are to be treated as ordinarily resident in any premises for these purposes: National Assistance Act 1948 s 26A(4) (s 26A added by the National Health Service and Community Care Act 1990 s 43). As to the Secretary of State see PARA 1001 note 6 ante. A person is ordinarily resident in premises if he is in fact resident in the premises or if he is temporarily absent from the premises: see the Residential Accommodation (Relevant Premises, Ordinary Residence and Exemptions) Regulations 1993, SI 1993/477, regs 1(2), 3. As to ordinary residence generally see PARA 1032 note 3 ante.

4 National Assistance Act 1948 s 26A(1) (as added: see note 3 supra). 'Relevant premises' means (1) premises in respect of which any person is registered under the Registered Homes Act 1984; (2) premises in respect of which such registration is not required by virtue of their being managed or provided by an exempt body; (3) premises which do not fall within the definition of a nursing home in the Registered Homes Act 1984 s 21 (repealed) by reason only of their being maintained or controlled by an exempt body; and (4) such other premises as the Secretary of State may by regulations prescribe: National Assistance Act 1948 s 26A(2) (as added: see note 3 supra). For the meaning of 'exempt body' see PARA 1033 note 11 ante (definition applied by s 26A(2) (as added: see note 3 supra)). The Secretary of State has made regulations prescribing that 'relevant premises' includes (a) premises which are an establishment in which residential accommodation with both board and personal care is or is intended to be provided for fewer than four persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives; and (b) premises run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that society: Residential Accommodation (Relevant Premises, Ordinary Residence and Exemptions) Regulations 1993, SI 1993/477, reg 2(1), (3).

5 National Assistance Act 1948 s 26A(3) (as added: see note 3 supra). As to the persons to whom s 26A(1) (as added) does not apply see the Residential Accommodation (Relevant Premises, Ordinary Residence and Exemptions) Regulations 1993, SI 1993/477, regs 4-9.

6 National Assistance Act 1948 s 26A(5) (as added: see note 3 supra)

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed

Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1034 Exclusion of powers to provide accommodation in certain cases

TEXT AND NOTES--Repealed: Health and Social Care Act 2001 s 50(1)(a), Sch 6 Pt 3.

As to abolition of preserved rights see PARA 1034A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1034A. Preserved rights.

1034A. Preserved rights.

1. Transfer to local authorities of responsibilities as to accommodation.

Where a qualifying person¹ is immediately before 8 April 2002 ordinarily resident in relevant premises² in the area of a local authority³ ('the responsible authority'), that authority must secure that (1) as from that day, or (2) as soon thereafter as is reasonably practicable, the person is provided with such community care services⁴ with respect to his accommodation as appear to the authority to be appropriate having regard to his needs⁵. Each local authority must accordingly (a) use its best endeavours to identify every person ordinarily resident in relevant premises in its area who is a qualifying person; and (b) carry out such a programme of assessments⁶ in respect of persons so identified as appears to the authority to be required for the purpose of enabling it to discharge its duty⁷ in relation to such persons⁸. Where a person is a qualifying person immediately before 8 April 2002, and is provided by the responsible authority⁹ with any community care services with respect to his accommodation¹⁰, his existing arrangements¹¹ terminate, by virtue of this provision¹², on the date as from which he is provided with those services¹³. Where any such person is not provided with any such services as from 8 April 2002, any liability of his to make any payment under his existing arrangements in respect of any period (or part of a period) falling within the period beginning with 8 April 2002 and ending with (i) the date as from which he is provided with any such services, or (ii) the date on which he notifies (or is in accordance with regulations to be treated as notifying) the responsible authority that he does not wish to be provided with any such services, is instead a liability of the responsible authority¹⁴.

1 For the purposes of the Health and Social Care Act 2001 s 50 a 'qualifying person' is (1) (in relation to any time before 8 April 2002 (see SI 2001/3752) a person to whom the National Assistance Act 1948 s 26A(1) (see PARA 1034) applies; or (2) (in relation to any later time) a person to whom s 26A applied immediately before that day: 2001 Act s 50(2).

2 In *ibid* s 50 'relevant premises' in relation to England or Wales, has the same meaning as in the 1948 Act s 26A: 2001 Act s 50(10).

3 For the meaning of 'local authority' see PARA 1012A.

4 For the meaning of 'community care services' see PARA 1012A.

5 2001 Act s 50(3), referring to his needs as assessed under the National Health Service and Community Care Act 1990 s 47(1)(a) (see PARA 1015). As to 'services provided by a local authority' see PARA 1012A.

6 *Ie* under the 1990 Act s 47(1)(a).

7 *Ie* under the 2001 Act s 50(3).

8 *Ibid* s 50(4).

9 'The responsible authority' is to be construed in accordance with *ibid* s 50(3): s 50(10).

10 *Ie* in accordance with *ibid* s 50(3).

11 'Existing arrangements', in relation to a person, means the arrangements for the provision of accommodation in the relevant premises mentioned in *ibid* s 50(3), together with any arrangements for the provision of any services or facilities in connection with that accommodation: s 50(10).

12 le by virtue of *ibid* s 50(5).

13 *Ibid* s 50(5).

14 *Ibid* s 50(6). However, the responsible authority may, in respect of any payment made by it in pursuance of s 50(6), recover from the person such amount (if any) as may be prescribed; and any such amount is so recoverable in accordance with the 1948 Act s 56 (see *PARA* 1039) as if it were an amount due to the authority under the 1948 Act: 2001 Act s 50(7). 'Prescribed' means prescribed by regulations: s 50(10). See the Preserved Rights (Transfer of Responsibilities to Local Authorities) Regulations 2001, SI 2001/3776, which apply to England, and the Preserved Rights (Transfer of Responsibilities to Local Authorities) (Wales) Regulations 2001, SI 2001/3985. As to regulations under the 2001 Act generally see s 64.

The provisions of s 50(3)-(7) do not apply to a person who, in respect of the day before the appointed day (ie 8 April 2002: see SI 2001/3752), is not entitled to income support, or is so entitled but not at the preserved rights rate, or is being provided with after-care services under the Mental Health Act 1983 s 117: see the 2001 Act s 50(8); SI 2001/3776 reg 2; and SI 2001/3985 reg 2. As to the circumstances in which persons are to be treated as ordinarily resident in any premises for the purposes of the 2001 Act s 50 see SI 2001/3776 reg 4; and SI 2001/3985 reg 4. Regulations may provide, for the purpose of prescribing any such amount as is mentioned in the 2001 Act s 50(7), for any provision made by or under the 1948 Act s 22 (see *PARA* 1033) or 26 (see *PARA* 1035) to apply with or without modifications: 2001 Act s 50(9). The amount that can be recovered where, under s 50(6), certain authorities are responsible for payments under arrangements which existed before the appointed day and which continue until community care services are provided is the same as the amount which could be recovered under the 1948 Act s 22, and the National Assistance (Assessment of Resources) Regulations 1992, SI 1992/2977 (see *PARA* 1035 NOTE 16), if those arrangements were the provision of accommodation by the authority under the 1948 Act Pt III (ss 21-36) and the standard rate fixed for the accommodation were the payment made by the authority for the existing arrangements: 2001 Act s 50(9); SI 2001/3776 reg 3; SI 2001/3985 reg 3.

2. Disclosure of information.

Any information (1) held by, or by a person providing services to, the Secretary of State about a claimant¹, and (2) relating to income support or jobseeker's allowance, may be supplied, for qualifying purposes², to the local authority³ in whose area the relevant premises⁴ are situated or to any person providing services to, or authorised to exercise functions of, the authority⁵. Where information relating to a claimant is supplied to any authority or person ('the recipient')⁶, the information may be supplied by the recipient, for qualifying purposes (a) to any local authority appearing to the recipient to be providing the claimant with community care services⁷ with respect to his accommodation; or (b) to any person providing services to, or authorised to exercise functions of, any such local authority⁸.

1 For the purposes of the Health and Social Care Act 2001 s 51 a 'claimant' is (1) (in relation to any time before 8 April 2002 (see SI 2001/3752)) a person who is ordinarily resident in relevant premises and has a preserved right by virtue of which enhanced payments are being made to or in respect of him by way of income support or jobseeker's allowance, or (2) (in relation to any later time) a person who fell within head (1) immediately before that day: 2001 Act s 51(1). In s 51 'ordinarily resident' and 'relevant premises' have the same meaning as they have for the purposes of s 50 (see *PARA* 1034A.1): s 51(6). 'Preserved right' means a preserved right within the meaning of the Income Support (General) Regulations 1987, SI 1987/1967: 2001 Act s 51(6). As to income support see *PARA* 176 et seq. As to jobseeker's allowance see *PARA* 258 et seq.

2 In *ibid* s 51(2) and (3) 'qualifying purposes', in relation to information relating to a claimant, means (1) purposes connected with the performance of functions under s 50 (see *PARA* 1034A.1) in relation to the claimant, or (2) other purposes connected with the termination of his preserved right in consequence of s 52(1) (see *PARA* 1034A.3), or (3) (in s 51(2)) any further supply of the information under s 51(3): s 51(4).

3 For the meaning of 'local authority' see *PARA* 1012A.

4 le referred to in the 2001 Act s 51(1).

5 *Ibid* s 51(2).

6 le in accordance with *ibid* s 51(2).

7 For the meaning of 'community care services' and as to 'services provided by a local authority' see *PARA* 1012A.

8 2001 Act s 51(3).

Where information relating to a particular person is supplied to any authority or person in accordance with s 51(2) or (3), the Social Security Administration Act 1992 s 123 (unauthorised disclosure of information relating to particular persons: see PARA 403) applies in relation to the disclosure of the information by (1) the recipient of the information, or (2) any officer or employee of the recipient, without lawful authority (within the meaning of s 123) as it applies to any disclosure of information to which s 123(1) applies: 2001 Act s 51(5).

3. Alignment of social security benefits.

The Secretary of State must so exercise his powers¹ as to secure that any special provision made in exercise of those powers as respects income support² or jobseeker's allowance³ payable to or in respect of persons who have preserved rights⁴ ceases to have effect on 8 April 2002⁵.

1 He under (1) the Social Security Contributions and Benefits Act 1992 s 135(1) (applicable amount in relation to income-related benefits: see PARA 174), and (2) the Jobseekers Act 1995 s 4(5) (amount payable by way of jobseeker's allowance: see PARA 272).

2 As to income support see PARA 176 et seq.

3 As to jobseeker's allowance see PARA 258 et seq.

4 'Preserved rights' means preserved rights within the meaning of the Income Support (General) Regulations 1987, SI 1987/1967: Health and Social Care Act 2001 s 52(2).

5 Ibid s 52(1); SI 2001/3752.

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1035. Charges to be made for accommodation.

1035. Charges to be made for accommodation.

Persons for whom accommodation is provided¹ must pay the local authority² providing the accommodation³ in accordance with a standard rate fixed for that accommodation by the authority managing the premises in which it is provided⁴.

A person for whom accommodation is provided under any arrangements made with a voluntary organisation⁵ or with any other person who is not a local authority⁶ must refund to the local authority any payments made in respect of him⁷. However, where accommodation in any premises is provided for any person under such arrangements and the local authority, the person concerned and the voluntary organisation or other person managing the premises ('the provider') so agree, then (1) so long as the person concerned makes the payments for which he is liable under head (2) below, he is not liable to make any refund to the local authority⁸ and the local authority will not be liable to make any payment in respect of the accommodation provided for him⁹; (2) the person concerned is liable to pay to the provider such sums as he would otherwise be liable to pay by way of refund to the local authority¹⁰; and (3) the local authority is liable to pay to the provider the difference between the sums paid by virtue of head (2) above and the payments which, but for head (1) above, the authority would be liable to pay¹¹.

Where a person for whom accommodation is provided¹², or proposed to be provided, satisfies the local authority that he is unable to pay at the standard rate or to make a refund at the full rate, the authority must assess his ability to pay, and accordingly determine at what lower rate he is to be liable to pay for the accommodation¹³.

In assessing a person's ability to pay, a local authority must (a) assume that he will need for his personal requirements such sum per week as may be prescribed by the Secretary of State¹⁴, or such other sum as in special circumstances the authority may consider appropriate¹⁵; and (b) give effect to regulations made by the Secretary of State in relation to the assessment of resources¹⁶.

1 Ie under the National Assistance Act 1948 Pt III (ss 21-36) (as amended). See PARA 1030 note 3 ante.

2 As to the meaning of 'local authority' see PARA 1005 ante.

3 Where a person is provided by a local authority with accommodation in premises managed by another local authority, the person must make the required payment to the authority managing the premises and not to the authority providing the accommodation, but the authority managing the premises must account for the payment to the authority providing the accommodation: National Assistance Act 1948 s 22(8).

4 Ibid s 22(1), (2) (amended by the National Health Service and Community Care Act 1990 s 44). The standard rate must represent the full cost to the authority of providing the accommodation: National Assistance Act 1948 s 22(2) (as so amended).

5 For the meaning of 'voluntary organisation' generally see PARA 1022 note 4 ante. See also PARA 1033 note 2 ante.

6 See PARA 1033 ante.

7 Ie under the National Assistance Act 1948 s 26(2) (as amended) (see PARA 1033 ante); s 26(3) (amended by the National Health Service and Community Care Act 1990 s 42(4)). This is in lieu of being liable to make payment in accordance with the National Assistance Act 1948 s 22 (as amended) (see the text and note 4 supra); s 26(3) (as so amended).

8 le under *ibid* s 26(3) (as amended) (see the text to note 7 *supra*).

9 le under *ibid* s 26(2) (as amended) (see PARA 1033 *ante*).

10 le under *ibid* s 26(3) (as amended) (see the text to note 7 *supra*).

11 le under *ibid* s 26(2) (as amended) (see PARA 1033 *ante*): s 26(3A) (added by the National Health Service and Community Care Act 1990 s 42(4)).

12 le whether in premises managed by any local authority or under any arrangements made with a voluntary organisation or with any other person who is not a local authority: see the National Assistance Act 1948 s 22(3) (as amended: see note 13 *infra*); s 26(3) proviso.

13 *Ibid* s 22(3) (amended by the National Health Service and Community Care Act 1990 s 44(1), (4)); National Assistance Act 1948 s 26(3) proviso.

14 *Ibid* s 22(4) refers to the Minister of Health (see s 35(1)), whose functions have been transferred to the Secretary of State for Health, and references to the minister are to be read as references to the Secretary of State: see the Secretary of State for Social Services Order 1968, SI 1968/1699; and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State see PARA 1001 note 6 *ante*.

Regulations may prescribe different sums for different circumstances: National Assistance Act 1948 s 22(4A) (added by the National Health Service and Community Care Act 1990 s 44(1), (5)); National Assistance Act 1948 s 26(3) proviso.

As to the sum prescribed see the National Assistance (Sums for Personal Requirements) Regulations 1997, SI 1997/486.

15 National Assistance Act 1948 ss 22(4), 26(3) proviso.

16 le the National Assistance (Assessment of Resources) Regulations 1992, SI 1992/2977 (amended by SI 1993/964; SI 1993/2230; SI 1994/825; SI 1994/2386; SI 1995/858; SI 1995/3054; SI 1996/602; SI 1997/485): National Assistance Act 1948 s 22(5) (amended by the Social Security Act 1980 s 20(1), Sch 4 para 2(1); the Social Security Act 1986 s 86(1), Sch 10 Pt II para 32 (repealed); and the National Health Service and Community Care Act 1990 s 66(2), Sch 10); National Assistance Act 1948 s 26(3) proviso. The court should be slow to interfere with a local authority's exercise of a wide discretion under the regulations: *R v Somerset County Council, ex p Harcombe* (1997) Times, 7 May.

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so

conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1035 Charges to be made for accommodation

TEXT AND NOTES--The 1948 Act ss 22, 26(2)-(4) have effect subject to any regulations under the Community Care (Delayed Discharges etc) Act 2003 s 15 (see PARA 1029-1041): 1948 Act s 22(8A) (added by the 2003 Act s 17(1)), 1948 Act s 26(4AA) (added by the 2003 Act s 17(2)).

NOTES--Where accommodation is provided to a person following his discharge from detention under the Mental Health Act 1983 s 3 it is required to be made under the 1983 Act s 117 and not under the National Assistance Act 1948 and, consequently, no charge may be made for it: *R (on the application of Stennett) v Manchester CC*; *R (on the application of Armstrong) v Redcar and Cleveland BC*; *R (on the application of Cobham) v Harrow LBC* [2002] UKHL 34, [2002] 4 All ER 124.

NOTE 14--As to the sum prescribed see now the National Assistance (Sums for Personal Requirements) (England) Regulations 2003, SI 2003/628, reg 2 (amended by SI 2006/674, SI 2007/725, SI 2009/597); National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2007, SI 2007/1041, reg 2.

NOTE 16--SI 1992/2977 further amended by SI 1998/497, SI 1998/1730, and, in relation to England, by SI 2001/58, SI 2001/1066, SI 2001/1124, SI 2001/3441, SI 2002/2531, SI 2003/627, SI 2003/2343, SI 2004/760, SI 2004/2328, SI 2005/708, SI 2005/3277, SI 2006/674, SI 2008/593, SI 2009/462, SI 2009/597, and, in relation to Wales, by SI 2001/276, SI 2001/1409, SI 2003/897, SI 2003/931, SI 2003/2530, SI 2004/1023, SI 2004/2879, SI 2005/662, SI 2005/3288, SI 2006/1051, SI 2007/1041, SI 2009/632, SI 2010/799. See *R (on the application of Beeson) v Dorset CC* [2002] EWCA Civ 1812, [2003] HLR 550; *Yule v South Lanarkshire Council* 2000 SLT 1249, IH.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1036. Power to limit sums payable for provision of residential accommodation.

1036. Power to limit sums payable for provision of residential accommodation.

A local authority¹ managing premises in which accommodation is provided for a person, or making arrangements for accommodation to be provided by a voluntary organisation² or any other person who is not a local authority³, has the power on each occasion when accommodation is provided for that person, irrespective of his means, to limit the payments required from him for his accommodation to such amount as appears to it reasonable for him to pay during a period commencing when accommodation begins to be provided and ending not more than eight weeks later⁴.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 For the meaning of 'voluntary organisation' generally see PARA 1022 note 4 ante. See also PARA 1033 note 2 ante.

3 See PARA 1033 ante.

4 See the National Assistance Act 1948 s 22(5A) (added by the Health and Social Services and Social Security Adjudications Act 1983 s 20(1)(a); and amended by the National Health Service and Community Care Act 1990 s 44(6)); National Assistance Act 1948 s 26(4) (amended by the Housing (Homeless Persons) Act 1977 s 20(4), Schedule; and the Health and Social Services and Social Security Adjudications Act 1983 s 20(1)(b)).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1037. Recovery of sums due to local authority where persons in residential accommodation have disposed of assets.

1037. Recovery of sums due to local authority where persons in residential accommodation have disposed of assets.

Where (1) a person avails himself of accommodation¹; and (2) he knowingly and with the intention of avoiding charges for the accommodation (a) has transferred any specified asset² to some other person or persons not more than six months before the date on which he begins to reside in such accommodation, or (b) transfers any such asset to some other person or persons while residing in the accommodation; and (3) either the consideration for the transfer is less than the value³ of the asset or there is no consideration for the transfer, then the person or persons to whom the asset is transferred by the person availing himself of the accommodation is liable⁴ to pay the local authority⁵ providing the accommodation or arranging for its provision the difference between the amount assessed as due to be paid for the accommodation by the person availing himself of it and the amount which the local authority receives from him for it⁶.

Where a person has transferred an asset⁷ to more than one person, the liability of each of the persons to whom it was transferred is in proportion to the benefit accruing to him from the transfer⁸.

1 le 'Part III accommodation', which is accommodation provided under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1029 et seq ante): see the Health and Social Services and Social Security Adjudications Act 1983 s 21(8).

2 le cash and any other asset which falls to be taken into account for the purpose of assessing, under the National Assistance Act 1948 s 22 (as amended) (see PARA 1035 ante), the ability of the person availing himself of the accommodation to pay for it: Health and Social Services and Social Security Adjudications Act 1983 s 21(2).

3 The value of any asset to which ibid s 21 (as amended) applies, other than cash, which has been transferred, is taken to be the amount of the consideration which would have been realised for it if it had been sold on the open market by a willing seller at the time of the transfer: s 21(6). For the purpose of calculating the value of an asset, the amount of any incumbrance on the asset and a reasonable amount in respect of the expenses of the sale must be deducted from the amount of the consideration: s 21(7).

4 A person's liability under ibid s 21 (as amended) must not exceed the benefit accruing to him from the transfer: s 21(5).

5 As to the meaning of 'local authority' see PARA 1005 ante.

6 Health and Social Services and Social Security Adjudications Act 1983 s 21(1). Section 21(1) has effect in relation to a transfer by a person who leaves Part III accommodation (see note 1 supra) and subsequently resumes residence in such accommodation as if the period mentioned in head (a) in the text were a period of six months before the date on which he resumed residence in such accommodation: s 21(3). If the Secretary of State so directs, s 21(1) does not apply in such cases as are specified in the direction: s 21(3A) (added by the National Health Service and Community Care Act 1990 s 45(1)). As to the Secretary of State see PARA 1001 note 6 ante.

7 See note 2 supra.

8 Health and Social Services and Social Security Adjudications Act 1983 s 21(4).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1038. Arrears of contributions charged on interest in land in England and Wales.

1038. Arrears of contributions charged on interest in land in England and Wales.

Where a person who avails himself of accommodation¹ provided by a local authority² fails to pay any sum assessed as due to be paid by him for the accommodation, and has a beneficial interest in land in England or Wales, the local authority may create a charge in its favour on his interest in the land³. In the case of a person who has interests in more than one parcel of land the charge must be upon his interest in such one of the parcels as the local authority may determine⁴. A charge created under these provisions must be in respect of any amount assessed as due to be paid which is outstanding from time to time⁵; but the charge on the interest of an equitable joint tenant in land must be in respect of an amount not exceeding the value of the interest that he would enjoy in the land if the joint tenancy were severed⁶. On the death of an equitable joint tenant in land whose interest in the land is subject to a charge⁷ then (1) if there are surviving joint tenants, their interests in the land; and (2) if the land vests in one person or one person is entitled to have it vested in him, his interest in it, become subject to a charge for an amount not exceeding the amount of the charge to which the interest of the deceased joint tenant was subject⁸.

Any sum charged on or secured over an interest in land⁹ bears interest from the day after that on which the person for whom the local authority provided the accommodation dies¹⁰. The rate of interest is such reasonable rate as the Secretary of State may direct or, if no such direction is given, as the local authority may determine¹¹.

1 Ie Part III accommodation: see PARA 1037 note 1 ante.

2 As to the meaning of 'local authority' see PARA 1005 ante.

3 Health and Social Services and Social Security Adjudications Act 1983 s 22(1). A charge under s 22 (as amended) is created by a declaration in writing made by the local authority: s 22(7). A charge created under s 22 (as amended), other than a charge on the interest of an equitable joint tenant in land, is, in the case of unregistered land, a land charge of Class B within the meaning of the Land Charges Act 1972 s 2 (as amended) (see LAND CHARGES) and, in the case of registered land, a registrable charge taking effect as a charge by way of legal mortgage: Health and Social Services and Social Security Adjudications Act 1983 s 22(8) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 21). In determining whether to exercise its power under the Health and Social Services and Social Security Adjudications Act 1983 s 22(1), the local authority must comply with any directions given to it by the Secretary of State as to the exercise of that power: s 22(2A) (added by the National Health Service and Community Care Act 1990 s 45(2)). As to the Secretary of State see PARA 1001 note 6 ante.

4 Health and Social Services and Social Security Adjudications Act 1983 s 22(2). In making any determination, the local authority must comply with any directions given by the Secretary of State: s 22(2A) (as added: see note 3 supra).

5 Ibid s 22(4).

6 Ibid s 22(5) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 21). The creation of such a charge does not sever the joint tenancy: Health and Social Services and Social Security Adjudications Act 1983 s 22(5) (as so amended).

7 Ie under ibid s 22 (as amended).

8 Ie under ibid s 22(5) (as amended) (see the text and note 6 supra): s 22(6) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 21).

9 le under the Health and Social Services and Social Security Adjudications Act 1983 Pt VII (ss 17-24) (as amended).

10 Ibid s 24(1).

11 Ibid s 24(2) (substituted by the National Health Service and Community Care Act 1990 s 45(3)).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1039. Recovery of cost of assistance from persons liable for maintenance, and in cases of misrepresentation or non-disclosure.

1039. Recovery of cost of assistance from persons liable for maintenance, and in cases of misrepresentation or non-disclosure.

Without prejudice to any other method of recovery, any sum due under the National Assistance Act 1948¹ or the Health Services and Public Health Act 1968² to a local authority³ is recoverable summarily as a civil debt⁴ and, notwithstanding anything in any Act, proceedings for the recovery of any sum in this manner may be brought at any time within three years after the sum became due⁵.

If, whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact⁶ and, in consequence of the misrepresentation or failure, a local authority incurs certain expenditure⁷ or any sum recoverable under that Act by a local authority is not recovered, the authority is entitled to recover the amount of that sum or expenditure from that person⁸.

Where assistance⁹ is given or applied for by reference to the requirements¹⁰ of any person (a 'person assisted'), the local authority concerned may make a complaint to the court¹¹ against any other person who for the purposes of the National Assistance Act 1948 is liable to maintain¹² the person assisted¹³. On the making of such a complaint the court must have regard to all the circumstances, and in particular to the resources of the defendant¹⁴, and may order¹⁵ the defendant to pay such sum, weekly or otherwise, as the court may consider appropriate¹⁶. Such payments must be made (1) to the local authority concerned, in respect of the cost of assistance, whether given before or after the making of the order; or (2) to the applicant for assistance or any other person being a person assisted; or (3) to such other person as appears to the court expedient in the interests of the person assisted, or partly in one such way and partly in another, if the order so provides¹⁷.

1 Ie other than a sum due under an order made under the National Assistance Act 1948 s 43 (as amended): s 56(1) (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 para 8).

2 Ie under the Health Services and Public Health Act 1968 s 45 (as amended) (see PARA 1024 ante): see s 45(5) (as amended).

3 As to the meaning of 'local authority' see PARA 1005 ante. Offences under the National Assistance Act 1948, other than offences under s 47(11) (as amended) (see PARA 1077 post), may be prosecuted by any council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (see PARA 1005 ante): National Assistance Act 1948 s 56(3) (substituted by the Local Government Act 1972 s 195(6), Sch 23 para 2(13)).

4 National Assistance Act 1948 s 56(1) (amended by the Supplementary Benefit Act 1966 s 39(3), Sch 8; and see note 1 supra). As to recovery summarily as a civil debt see MAGISTRATES.

5 National Assistance Act 1948 s 56(2).

6 As to false statements or misrepresentations see PARA 1041 post.

7 Ie any expenditure under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) or the Health Services and Public Health Act 1968 s 45 (as amended) (see PARA 1024 ante): see the National Assistance Act 1948 s 45(1) (as amended: see note 8 infra); and the Health Services and Public Health Act 1968 s 45(5) (as amended).

8 National Assistance Act 1948 s 45(1) (amended by the Supplementary Benefit Act 1966 Sch 8).

9 'Assistance' means the provision of accommodation under the National Assistance Act 1948 Pt III (as amended): s 43(4) (amended by the Supplementary Benefit Act 1966 Sch 8).

10 'Requirements' does not include any medical, surgical, optical, aural or dental requirements: National Assistance Act 1948 s 64(1).

11 'The court' means a court of summary jurisdiction appointed for the commission area within the meaning of the Justices of the Peace Act 1997 where the assistance was given or applied for: National Assistance Act 1948 s 43(4) (amended by the Domestic Proceedings and Magistrates' Courts Act 1978 s 89(2)(a), Sch 2 para 6; the Justices of the Peace Act 1979 s 71, Sch 2 para 3; and the Justices of the Peace Act 1997 s 73(2), Sch 5 para 5). See MAGISTRATES.

12 As to the liability to maintain see PARA 1040 post.

13 National Assistance Act 1948 s 43(1) (amended by the Supplementary Benefit Act 1966 Sch 8). Such proceedings, except proceedings for the enforcement of an order or for the variation of any provision for the periodical payment of money contained in an order, are family proceedings: see the Magistrates' Courts Act 1980 s 65(1) (as amended); and MAGISTRATES.

14 In relation to payments in respect of assistance given before the complaint was made, a person is not to be treated as having at the time when the complaint is heard any greater resources than he had at the time when the assistance was given: National Assistance Act 1948 s 43(3).

15 The order is enforceable as a magistrates' court maintenance order within the meaning of the Magistrates' Courts Act 1980 s 150(1) (definition as added) (see MAGISTRATES): National Assistance Act 1948 s 43(6) (added by the Supplementary Benefits Act 1966 s 35(2), Sch 7 para 4; and substituted by the Family Law Reform Act 1987 s 33(1), Sch 2 para 6).

16 National Assistance Act 1948 s 43(2).

17 See *ibid* s 43(5) (amended by the Supplementary Benefit Act 1966 Sch 8).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1039 Recovery of cost of assistance from persons liable for maintenance, and in cases of misrepresentation or non-disclosure

TEXT AND NOTE 4--National Assistance Act 1948 s 56(1) further amended: Health and Social Care Act 2008 Sch 15 Pt 5.

TEXT AND NOTES 9-17--National Assistance Act 1948 s 43 repealed: Health and Social Care Act 2008 s 147(1), Sch 15 Pt 5.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1040. Liability to maintain wife or husband, and children.

1040. Liability to maintain wife or husband, and children.

For the purposes of the National Assistance Act 1948 a man is liable to maintain his wife and his children¹, and a woman is liable to maintain her husband and her children².

Where a person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain³, and in consequence of his refusal or neglect accommodation is provided for himself or any other person⁴, he is guilty of an offence⁵, although a person is not deemed to refuse or neglect to maintain himself or any other person by reason only of anything done or omitted in furtherance of a trade dispute⁶.

1 National Assistance Act 1948 s 42(1)(a). 'Child' means a person under the age of 16, and a person is deemed not to have attained the age of 16 years until the commencement of the sixteenth anniversary of the day of his birth: s 64(1), (3). References in s 42(1) to a person's children are to be construed in accordance with the Family Law Reform Act 1987 s 1 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125): National Assistance Act 1948 s 42(2) (substituted by the Family Law Reform Act 1987 s 33(1), Sch 2 para 5).

2 National Assistance Act 1948 s 42(1)(b).

3 Ie for the purposes of the National Assistance Act 1948.

4 Ie under ibid Pt III (ss 21-36) (as amended). See PARA 1030 note 3 ante.

5 Ibid s 51(1) (amended by the Supplementary Benefit Act 1966 s 39(3), Sch 8). A person guilty of such an offence is liable on summary conviction (1) where the accommodation was provided for him, to imprisonment for a term not exceeding three months; and (2) in any other case, to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months or to both: National Assistance Act 1948 s 51(3) (amended by the Supplementary Benefit Act 1966 Sch 8; and the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1014 note 11 ante. See also PARA 1039 ante.

6 National Assistance Act 1948 s 51(2). 'Trade dispute' has the same meaning as in the Social Security Contributions and Benefits Act 1992 s 27 (repealed: see now the Jobseekers Act 1995 s 35(1); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 301 note 2): National Assistance Act 1948 s 64(1) (definition substituted by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 1).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such

assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

1040 Liability to maintain wife or husband, and children

TEXT AND NOTES 1, 2--National Assistance Act 1948 s 42 repealed: Health and Social Care Act 2008 Sch 15 Pt 5.

TEXT AND NOTES 3-6--National Assistance Act 1948 s 51(1), (3) further amended, s 51(2) amended: Health and Social Care Act 2008 s 147(1), (3), Sch 15 Pt 5.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1041. False statements or representations.

1041. False statements or representations.

A person commits an offence¹ if he makes any statement or representation which he knows to be false for the purpose of avoiding or reducing any liability under the National Assistance Act 1948 or for the purpose of obtaining certain benefits², either for himself or for another person³.

1 A person who is guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months or to both: National Assistance Act 1948 s 52(1) (amended by the Supplementary Benefit Act 1966 s 39(3), Sch 8; and the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 1014 note 11 ante. See also PARA 1039 ante.

Proceedings may be begun at any time within three months from the date on which evidence sufficient in the opinion of the local authority concerned to justify a prosecution for the offence comes to the knowledge of the local authority, or within 12 months from the commission of the offence, whichever period is the longer: National Assistance Act 1948 s 52(2) (amended by the Supplementary Benefit Act 1966 Sch 8). A certificate of the local authority as to the date on which such evidence came to its knowledge is conclusive proof of that date: National Assistance Act 1948 s 52(3) (amended by the Supplementary Benefit Act 1966 Sch 8).

2 To obtain any benefit under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) or under the Health Services and Public Health Act 1968 s 45 (as amended) (see PARA 1024 ante): see the National Assistance Act 1948 s 52(1) (as amended: see note 1 supra); and the Health Services and Public Health Act 1968 s 45(5) (as amended).

3 National Assistance Act 1948 s 52(1) (as amended: see note 1 supra).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/3. COMMUNITY CARE SERVICES/(3) RESIDENTIAL ACCOMMODATION/1041A. Measures to increase availability of Pt III accommodation.

1041A. Measures to increase availability of Pt III accommodation.

1. Funding by resident etc of more expensive accommodation

Regulations may make provision for and in connection with the making, in respect of the provision of Part 3 accommodation¹, of additional payments² (1) by persons for whom such accommodation is provided ('residents'); or (2) by other persons³.

1 In the Health and Social Care Act 2001 Pt 4 (ss 49-59) 'Part 3 accommodation' means accommodation provided under the National Assistance Act 1948 ss 21-26 (see PARA 1029 et seq): Health and Social Care Act 2001 s 54(3). In Pt 4 any reference to Part 3 accommodation or to a local authority providing such accommodation is to be construed in accordance with the National Assistance Act 1948 s 21(5) or (6) (see PARA 1030), as the case may be: Health and Social Care Act 2001 s 59(2). For the meaning of 'local authority' see PARA 1012A.

2 In ibid s 54 'additional payments', in relation to a resident, means payments which (1) are made for the purpose of meeting all or part of the difference between the actual cost of his Part 3 accommodation and the amount that the local authority providing it would usually expect to pay in order to provide Part 3 accommodation suitable for a person with the assessed needs of the resident; and (2) (in the case of additional payments by the resident) are made out of such of his resources as may be specified in, or determined in accordance with, regulations under s 54(1); and for this purpose 'resources' has the meaning given by such regulations: s 54(2).

3 Ibid s 54(1) (amended by the Health and Social Care Act 2008 Sch 15 Pt 5). See the National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001, SI 2001/3441, and the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003, SI 2003/931. As to regulations under the Health and Social Care Act 2001 generally see s 64.

2. Power for local authorities to take charges on land instead of contributions

Where a person ('the resident') (1) is availing himself of Part 3 accommodation¹ provided by a local authority², or is proposing to do so, and (2) is liable, or would be liable, to pay for the accommodation (whether at the full standard rate³ or at any lower rate), the local authority may enter into a deferred payment agreement⁴ with the resident⁵. The relevant authority⁶ may by directions require local authorities, where (a) they provide or are to provide Part 3 accommodation for a person falling within the above provision⁷ ('the resident'), and (b) any conditions specified in the directions are satisfied, to enter into a deferred payment agreement with the resident⁸. A 'deferred payment agreement' is an agreement whereby (i) during the exempt period⁹ the resident will not be required to make payment to the authority of any relevant contributions¹⁰ in respect of periods (or parts of periods) falling within the exempt period, but (ii) the total amount of the relevant contributions becomes payable to the authority on the day after the date on which the exempt period ends, and (iii) the resident will grant the authority a charge in its favour in respect of any land specified in the agreement in which he has a beneficial interest (whether legal or equitable) for the purpose of securing the payment to the authority of the total amount payable to it as mentioned in head (ii) above¹¹.

Any directions given by the relevant authority under the above provisions must be given to local authorities generally¹².

1 'Part 3 accommodation' means (in accordance with the Health and Social Care Act 2001 s 54(3) (see PARA 1041A.1)) accommodation provided under the National Assistance Act 1948 ss 21-26 (see PARA 1029 et seq): Health and Social Care Act 2001 s 59(1).

2 For the meaning of 'local authority' see PARA 1012A.

3 Ie determined in accordance with the National Assistance Act 1948 s 22(2) (see PARA 1035) or 26(2) (see PARA 1033).

4 For the meaning of 'deferred payment agreement' see TEXT AND NOTE 11.

5 Health and Social Care Act 2001 s 55(1).

6 'The relevant authority' means (1) in relation to England, the Secretary of State, (2) in relation to Wales, the National Assembly for Wales: *ibid* s 66.

7 Ie *ibid* s 55(1).

8 *Ibid* s 55(2).

9 'The exempt period', in relation to a deferred payment agreement, is the period beginning with the time when the agreement takes effect and ending (1) 56 days after the date of the resident's death, or (2) with any earlier date which, in accordance with the agreement, the resident has specified in a notice given by him to the authority for the purposes of *ibid* s 55(5)(b) (see NOTE 11 head (2)): s 55(4).

10 Any reference in *ibid* s 55 to relevant contributions is a reference to so much of the payments which the resident is liable to pay to an authority for Part 3 accommodation (including any payments which are additional payments for the purpose of s 54 (see PARA 1041A.1)) as may be specified, or determined in accordance with, regulations made for the purposes of this provision: s 55(7). See National Assistance (Residential Accommodation) (Relevant Contributions) (England) Regulations 2001, SI 2001/3069, and National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003, SI 2003/931. As to regulations under the Health and Social Care Act 2001 generally see s 64.

11 *Ibid* s 55(3).

The provisions of any deferred payment agreement and any such charge as is mentioned in head (iii) in the text (1) must be determined by the authority in accordance with any directions given by the relevant authority; but (2) must secure that the agreement and any such charge may be terminated by notice given to the authority by the resident on payment of the full amount which he is liable to pay as mentioned in head (i) in the text down to the date of the payment: s 55(5). Where a deferred payment agreement is in force in respect of the resident (a) no interest accrues at any time on or before the date on which the exempt period ends in respect of any sum which he is liable to pay as mentioned in head (i) in the text; but (b) as from the day after that date, any such sum bears interest at such reasonable rate as the relevant authority may direct or, if no such directions are given, as the authority may determine; and accordingly any charge granted in pursuance of head (iii) in the text secures payment to the authority of any interest falling due by virtue of head (b): s 55(6).

12 *Ibid* s 55(8).

3. Cross-border placements

The following provisions are not yet in force unless otherwise stated.

Regulations may make provision for and in connection with authorising a local authority¹ to make arrangements² for a person to be provided with residential accommodation in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man³. Regulations under these provisions may, in particular, make provision (1) specifying conditions which must be satisfied before a local authority makes any arrangements in pursuance of the regulations in respect of a person; (2) for the application of provisions of the National Assistance Act 1948 in relation to (a) any such arrangements, or (b) the person in respect of whom any such arrangements are made, with or without modifications⁴.

1 For the meaning of 'local authority' see PARA 1012A.

2 le under the National Assistance Act 1948 s 21: see PARA 1030.

3 Health and Social Care Act 2001 s 56(1). As to regulations under the Health and Social Care Act 2001 generally see s 64 (in force).

4 Ibid s 56(2).

UPDATE

1029-1041 Residential Accommodation

For measures to increase the availability of Pt III accommodation see PARA 1041A.

As to the power of the Secretary of State and the National Assembly for Wales, by regulations, to require that the provision of accommodation under the National Assistance Act 1948 Pt 3 is to be free of charge, see the Community Care (Delayed Discharges etc) Act 2003 ss 15, 16. In exercise of the powers so conferred, the Secretary of State has made the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003, SI 2003/1196.

The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Assistance Act 1948 Pt 3 (ss 21-36) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

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4. RESIDENTIAL CARE HOMES

(1) REGISTRATION

1042. Registration of residential care homes.

The Registered Homes Act 1984¹ requires registration in respect of any establishment² which provides or is intended to provide, whether for reward or not, residential accommodation³ with both board and personal care⁴ for persons in need of personal care by reason of old age, disablement⁵, past or present dependence on alcohol or drugs, or past or present mental disorder⁶. Such an establishment is referred to as a 'residential care home'⁷.

Registration is not required, however, in respect of:

- 27 (1) a small home⁸ (a) if the only persons⁹ for whom it provides or is intended to provide residential accommodation with both board and personal care are persons carrying on or intending to carry on the home, or employed or intended to be employed there, or their relatives¹⁰; or (b) in such other cases as may be prescribed by the Secretary of State¹¹;
- 28 (2) any establishment which is used, or is intended to be used, solely as a nursing home or mental nursing home¹²;
- 29 (3) certain hospitals¹³;
- 30 (4) any community home, voluntary home or children's home¹⁴;
- 31 (5) certain schools¹⁵;
- 32 (6) any establishment to which the Secretary of State has made a payment of maintenance grant under certain regulations¹⁶;
- 33 (7) any university or university college, or college, school or hall of a university¹⁷;
- 34 (8) any establishment managed or provided by a government department or local authority or by any authority or body constituted by an Act of Parliament or incorporated by royal charter¹⁸.

1 The Registered Homes Act 1984 Pt I (ss 1-20) (as amended). Registration under Pt I (as amended) does not affect any requirement to register under Pt II (ss 21-38) (as amended): s 1(3).

As to transitional provisions relating to the time limit for registration after the coming into force of the Registered Homes Act 1984 see the Residential Care Homes Regulations 1984, SI 1984/1345, reg 4.

2 Two separate buildings within the same curtilage, providing accommodation and board for residents of a residential home, may be regarded as one establishment: *Harrison v Cornwall County Council* (1991) 90 LGR 81, CA.

3 For the purposes of the Registered Homes Act 1984, 'residential accommodation' is provided to persons in residential care homes who intend staying only on a temporary basis: *Swindells v Cheshire County Council* (1993) 91 LGR 582, DC. Elderly people who come with their carers only during the day to a residential home registered under the Registered Homes Act 1984 are not resident there: *Cotgreave and Cotgreave v Cheshire County Council* (1992) 157 JP 85, 15 BMLR 50, DC.

4 'Personal care' means care which includes assistance with bodily functions where such assistance is required: Registered Homes Act 1984 s 20(1).

5 'Disablement', in relation to persons, means that they are blind, deaf or dumb or substantially and permanently handicapped by illness, injury or congenital deformity or any other disability prescribed by the

Secretary of State: *ibid* s 20(1). At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 1001 note 6 ante.

6 Registered Homes Act 1984 s 1(1). 'Mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind: s 55.

7 *Ibid* s 1(2). A local authority which has a duty to provide community care services under the National Assistance Act 1948 s 21(1) (see PARA 1029 et seq ante) may impose stricter contractual terms in making arrangements with operators of registered residential care homes to provide those community care services than those required by that Act or by the Registered Homes Act 1984: *R v Newcastle-upon-Tyne City Council, ex p Dixon* (1993) 92 LGR 168. Conditions contained in such terms will not, however, be upheld unless the authority has acted reasonably in imposing them: *R v Cleveland County Council, ex p Cleveland Care Homes Association* (1993) 17 BMLR 122. As to the meaning of 'community care services' see PARA 1012 ante.

8 'Small home' means an establishment which provides or is intended to provide residential accommodation with both board and personal care for fewer than four persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives: Registered Homes Act 1984 ss 1(4A), 20(1) (definition added by the Registered Homes (Amendment) Act 1991 s 1(1), (2), (9)).

9 References to the persons for whom residential accommodation is or is intended to be provided relate only to persons who are in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder: Registered Homes Act 1984 s 1(4B) (added by the Registered Homes (Amendment) Act 1991 s 1(1), (2)).

10 Registered Homes Act 1984 s 1(4)(a) (substituted by the Registered Homes (Amendment) Act 1991 s 1(1), (2)). 'Relative' means any of the following: husband or wife, son or daughter, father or mother, brother or sister, grandparent or other ascendant, grandchild or other descendant, uncle or aunt, nephew or niece: Registered Homes Act 1984 s 19(1). 'Husband' and 'wife' include a person who is living with a person carrying on or intending to carry on a residential care home as that person's husband or wife, as the case may be, and who has been so living for not less than six months: s 19(3). For these purposes, any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of a person as his child; and an illegitimate person is treated as the legitimate child of his mother and reputed father: s 19(2). A person, other than a relative, with whom a person carrying on or intending to carry on a residential care home ordinarily resides, and with whom that person has been ordinarily residing for not less than five years, is treated as if he were a relative: s 19(4).

11 *Ibid* s 1(4)(b) (substituted by the Registered Homes (Amendment) Act 1991 s 1(1), (2)). Registration under the Registered Homes Act 1984 Pt I (as amended) is not required in respect of a small home if the only person or persons for whom it provides residential accommodation with both board and personal care are (1) a child or children in need of personal care by reason of disablement, past or present dependence on alcohol or drugs, or past or present mental disorder, who are accommodated by way of (a) foster placement by a local authority pursuant to the Children Act 1989 s 23(2)(a) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 900), (b) foster placement by a voluntary organisation pursuant to s 59(1)(a) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 975), (c) private arrangements for fostering children pursuant to Pt IX (ss 66-70) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1049 et seq); or (2) such children, together with persons carrying on or intending to carry on the home or employed or intended to be employed there or their relatives: Residential Care Homes Regulations 1984, SI 1984/1345, reg 24 (added by SI 1992/2241).

12 Registered Homes Act 1984 s 1(5)(a). See note 1 supra.

13 *Ie* any hospital (1) as defined by the National Health Service Act 1977 s 128 which is maintained in pursuance of an Act of Parliament; and (2) as defined in the Mental Health Act 1983 s 145(1) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 417): Registered Homes Act 1984 s 1(5)(b), (c) (repealed). See also HEALTH SERVICES vol 54 (2008) PARA 12.

14 *Ie* within the meaning of the Children Act 1989 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 967, 976, 983): Registered Homes Act 1984 s 1(5)(d) (substituted by the Children Act 1989 s 108(5), Sch 13 para 49(1)).

15 *Ie* any school as defined in the Education Act 1996 s 4: Registered Homes Act 1984 s 1(5)(f) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 58). See EDUCATION vol 15(1) (2006 Reissue) PARA 81. An independent school within the meaning of the Education Act 1996 is not excluded by the Registered Homes Act 1984 s 1(5)(f) (as amended) if the school provides accommodation for 50 or less children under the age of 18 years and is not for the time being approved by the Secretary of State under the Education Act 1996 s 347: Registered Homes Act 1984 s 1(6) (amended by the Education Act 1993 s 307(1), Sch 19 para 85; and the Education Act 1996 Sch 37 Pt I para 58). See further EDUCATION vol 15(2) (2006 Reissue) PARA 1164 et seq.

16 The regulations made by virtue of the Education Act 1996 s 485: Registered Homes Act 1984 s 1(5)(g) (amended by the Education Act 1996 Sch 37 Pt I para 58). The relevant establishments are listed in Department of Health and Social Security Circular No (84)15 Annex 1 Pt 1. As to the relevant regulations see EDUCATION vol 15(1) (2006 Reissue) PARA 69. An establishment to which a payment of maintenance grant is made is only excluded by the Registered Homes Act 1984 s 1(5)(g) (as amended) until the end of the period of 12 months from the date on which the Secretary of State made the payment: s 1(7) (amended by the Education Act 1996 Sch 37 Pt I para 58).

17 Registered Homes Act 1984 s 1(5)(h).

18 Ibid s 1(5)(j). The relevant establishments are listed in Department of Health and Social Security Circular No (84)15 Annex 1 Pt 2.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care in England: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

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1042A. Registration.

For provision as to registration under the Health and Social Care Act 2008 see PARA 1001A.

1. Procedure and offences

Any person who carries on or manages an establishment or agency¹ of any description without being registered under Part II of the Care Standards Act 2000² is guilty of an offence³. An application for registration must be made to the registration authority⁴ and must give the prescribed information about prescribed matters, and any other information which the registration authority reasonably requires the applicant to give⁵. An application may be granted either unconditionally or subject to such conditions as the registration authority thinks fit⁶; and the registration authority may at any time cancel a person's registration⁷. A person may apply for the variation or removal of any condition in force in relation to the registration, or for cancellation of the registration, or for the cancellation of, or the variation of the period of, any suspension of the registration⁸. Regulations make further provision concerning registration⁹. The registration authority must give notice of decisions it intends to take with respect to applications for registration, suspension of registration or extension of a period of suspension, cancellation of registration or any change to the conditions of registration¹⁰. In relation to England, the Chief Inspector of Education, Children's Services and Skills may apply to a justice of the peace for an order for the cancellation of registration or a change in the conditions of registration of an establishment or agency for which it is the registration authority¹¹. An appeal lies to the Tribunal¹² against a decision of the registration authority or an order made by the justice of the peace¹³.

Regulations may require (1) the person carrying on an establishment or agency to provide the registration authority with an annual return to include whatever details and cover whatever period of time is prescribed¹⁴; (2) any person appointed as a receiver or manager, as a liquidator or provisional liquidator, or as a trustee in bankruptcy of a company which or an individual who is registered in respect of an establishment or agency inform the registration authority of his appointment¹⁵; (3) the personal representatives of a person who was the only person registered in respect of an establishment or agency who dies, to notify the registration authority¹⁶. If a person registered in respect of an establishment or agency fails, without reasonable excuse, to comply with any condition for the time being in force¹⁷, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁸. If a person who is registered in respect of an establishment or agency carries on or, as the case may be, manages the establishment or agency while the person's registration is suspended, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁹.

A person who, with intent to deceive any person applies any name to premises²⁰ in England or Wales; or in any way describes such premises or holds such premises out, so as to indicate, or reasonably be understood to indicate, that the premises are an establishment, or an agency, of a particular description is liable on summary conviction to a fine not exceeding level 5 on the standard scale unless registration has been effected²¹ in respect of the premises as an establishment or agency of that description²². Any person who, in an application for registration or for the variation of any condition in force in relation to his registration, knowingly makes a statement which is false or misleading in a material respect is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale²³. A certificate of

registration in respect of any establishment or agency must be kept affixed in a conspicuous place in the establishment or at the agency²⁴. Proceedings in respect of an offence or regulations made under it may not, without the written consent of the Attorney General, be taken by any person other than Her Majesty's Chief Inspector of Education, Children's Services and Skills or the Welsh Ministers²⁵. Where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence²⁶, they may give the person a penalty notice in respect of the offence²⁷.

Regulations may (a) require the person carrying on an establishment or agency to make an annual return to the registration authority²⁸; (b) require a receiver or manager of the property of a relevant company; the liquidator or provisional liquidator of a relevant company; or the trustee in bankruptcy of a relevant individual to give notice of his appointment to the registration authority; and to appoint a person to manage the establishment or agency in question²⁹; and (c) make provision for the carrying on of the establishment or agency for a prescribed period on the death of a registered person³⁰.

Copies of any register which the registration authority has to keep are to be available for inspection³¹.

1 This does not include a voluntary adoption agency: see the Care Standards Act 2000 s 11(3) (amended by the Adoption and Children Act 2002 Sch 3 para 106). See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 985. Where the activities of an agency are carried on from two or more branches, each of those branches is to be treated as a separate agency for these purposes: 2000 Act s 11(2).

2 le 2000 Act Pt II (ss 11-42). Sections 14(1)(d), 16(1), (3), 22, 25(1), 31(7), 33-35, 36(3) apply, with modifications, to a person who carries on or manages an adult placement scheme: see the Care Standards Act 2000 (Extension of the Application of Part 2 to Adult Placement Schemes) (England) Regulations 2004, SI 2004/1972, made under the 2000 Act s 42. See the Adult Placement Schemes (England) Regulations 2004, SI 2004/2071 (amended by SI 2005/2114, SI 2006/1493, SI 2007/556, SI 2007/1898, SI 2009/1895); and the Adult Placement Schemes (Wales) Regulations 2004, SI 2004/1756 (amended by SI 2005/3302, SI 2006/3251, SI 2009/2541).

3 2000 Act s 11(1). For provision about the keeping of registers by Her Majesty's Chief Inspector of Education, Children's Services and Skills, see s 11(4) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 20; the Education and Inspections Act 2006 Sch 14 para 42; and, from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 10(c), Sch 15 Pt 1; and, in relation to England, the National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969 (amended by SI 2002/865, SI 2002/2469, SI 2003/369, SI 2003/1845, SI 2003/2323, SI 2004/664, SI 2004/696, SI 2004/1771, SI 2005/2114, SI 2005/2720, SI 2007/603, SI 2009/1895).

A person guilty of an offence is liable on summary conviction (1) if the Care Standards Act 2000 s 11(6) does not apply, to a fine not exceeding level 5 on the standard scale; (2) if s 11(6) applies, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both: s 11(5). As to the standard scale, see PARA 1014 NOTE 11. Section 11(6) applies if the person was registered in respect of the establishment or agency at a time before the commission of the offence but the registration was cancelled before the offence was committed; or the conviction is a second or subsequent conviction of the offence and the earlier conviction, or one of the earlier convictions, was of an offence in relation to an establishment or agency of the same description: s 11(6).

4 For the purposes of the Care Standards Act 2000, the registration authority in relation to England is Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1001A). As to the registration authority in Wales, see PARA 1001B. As to the service of documents see the 2000 Act s 37.

5 Ibid s 12(1), (2). The application must be accompanied by a fee of the prescribed amount: s 12(2) (amended by the Care Standards Act 2000 s 105(3); the Education and Inspections Act 2006 Sch 14 para 43; and the Health and Social Care Act 2008 Sch 5 para 11 (in force in relation to England)). See the Commission for Social Care Inspection (Fees and Frequency of Inspections) Regulations 2007, SI 2007/556; the Registration of Social Care and Independent Health Care (Wales) Regulations 2002, SI 2002/919 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 986 et seq); and the Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2007, SI 2007/694 (see EDUCATION vol 15(2) (2006 Reissue) PARA 1164A), which apply in relation to England only.

6 2000 Act s 13.

7 Ibid s 14 (amended by the 2002 Act Sch 3 para 107; and, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 12). See *Bamgbala v Commission for Social Care Inspection* [2008] EWHC 629 (Admin), [2008] All ER (D) 54 (Apr) (registered provider unfit to manage care home); *Marshall v Commission for Social Care Inspection* [2009] EWHC 1286 (Admin), [2009] All ER (D) 224 (Jun). As to the power of the Welsh Ministers to suspend registration for a specified period, see the 2000 Act s 14A (added by the Health and Social Care Act 2008 Sch 5 para 13 (in force for certain purposes: SI 2009/462)).

8 See the 2000 Act s 15 (amended by the 2003 Act s 105(4), (5); the Education and Inspections Act 2006 Sch 14 para 44; and the Health and Social Care Act 2008 Sch 5 para 14 (in force in part)).

9 See SI 2001/3969, NOTE 3, made under the 2000 Act s 16 (amended by the 2002 Act Sch 3 para 108, Sch 5; the 2003 Act s 105(6); the Education and Inspections Act 2006 Sch 14 para 45; and, the Health and Social Care Act 2008 Sch 5 para 15 (in force in relation to England: SI 2009/2682)).

10 2000 Act s 17 (amended by the Health and Social Care Act 2008 Sch 5 para 16). A notice must indicate that the person can, if he so wishes, make written representations to the registration authority within 28 days: see the 2000 Act s 18. Following this, the registration authority must serve written notice of its decision on the applicant: see s 19 (amended by the Health and Social Care Act 2008 Sch 5 para 17, Sch 15 Pt 1). See *Trent Strategic Health Authority v Jain* [2009] UKHL 4, [2009] 2 WLR 248, (2009) 106 BMLR 88 (decided under the Registered Homes Act 1984).

11 2000 Act s 20(1) (amended, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 18(2)). An order may only be made where it appears to the justice that unless the order is made there will be a serious risk to a person's life, health or well-being: 2000 Act s 20(1). An application under s 20(1) may, if the justice thinks fit, be made without notice: s 20(2). As soon as practicable after the making of an application under s 20, the Chief Inspector of Education, Children's Services and Skills must notify the appropriate authorities of the making of the application: s 20(3) (amended, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 18(3)). As to the appropriate authorities for this purpose, see the 2000 Act s 20(6) (amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 para 70; the References to Health Authorities Order 2007, SI 2007/961; and, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 18(5)). As to the procedure for urgent cancellation, suspension or variation in Wales, see the 2000 Act ss 20A, 20B (added by the Health and Social Care Act 2008 Sch 5 para 19 (not yet in force)).

12 Ie established under the Protection of Children Act 1999 s 9: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708 et seq.

13 2000 Act s 21 (amended by the Health and Social Care Act 2008 Sch 5 para 20 (in force in part), Sch 15 Pt 1).

14 2000 Act s 33(1). Regulations may make provision as to the contents of the return and the period in respect of which and date by which it is to be made: s 33(2).

15 Ibid s 34. See the Adoption Support Agencies (Wales) Regulations 2005, SI 2005/1514, reg 31; and the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, SI 2005/2720, reg 28.

16 2000 Act s 35. See SI 2005/1514 reg 30 and SI 2005/2720 reg 27.

17 Ie by virtue of the 2000 Act Pt II in respect of the establishment or agency.

18 Ibid s 24.

19 Ibid s 24A (added by the Health and Social Care Act 2008 Sch 5 para 22). Regulations under the 2000 Act Pt II may provide that a contravention of or failure to comply with any specified provision of the regulations is an offence: s 25(1). A person guilty of an offence under the regulations is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 25(2).

20 Ie including an undertaking or organisation.

21 Ie under ibid Pt II.

22 Ibid s 26(1). If a person's registration has been suspended, the registration is to be treated for the purposes of s 26(1) as if it had not been effected: s 26(1A) (added by the Health and Social Care Act 2008 Sch 5 para 23). No person may, with intent to deceive any person, in any way describe or hold out an establishment or agency as able to provide any service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of Pt II in respect of the establishment or agency: 2000 Act s

26(3). The maximum penalty on summary conviction of this offence is a fine not exceeding level 5 on the standard scale: s 26(4).

23 Ibid s 27.

24 Ibid s 28(1). If default is made in complying with this provision, any person registered in respect of the establishment or agency is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 28(2).

25 Ibid s 29(1) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 22; and the Education and Inspections Act 2006 Sch 14 para 47; and substituted, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 24(a)). Proceedings for an offence may be brought within the permitted period from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings may be brought more than three years after the commission of the offence: 2000 Act s 29(2) (s 29(2) amended, s 29(3) added by the Health and Social Care Act 2008 Sch 5 para 24(b), (c)). The 'permitted period' means (1) in the case of proceedings brought by the Welsh Ministers, a period of 12 months; (2) in any other case, a period of 6 months: 2000 Act s 29(3). As to offences by bodies corporate see s 30.

26 A fixed penalty offence is any relevant offence which relates to an establishment or agency for which the Welsh Ministers are the registration authority, and is prescribed for these purposes: s 30ZA(2) (ss 30ZA, 30ZB added by the Health and Social Care Act 2008 Sch 5 para 25). A relevant offence is an offence under the 2000 Act Pt II or under regulations made under Pt II, or an offence under regulations made under the Adoption and Children Act 2002 s 9 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 397): 2000 Act s 30ZA(3).

27 Ibid s 30ZA(1). For supplementary provision as to penalty notices, see s 30ZB.

28 Ibid s 33.

29 Ibid s 34. See the Care Homes Regulations 2001, SI 2001/3965 (amended by SI 2002/865, SI 2003/534, SI 2003/1590, SI 2003/1703, SI 2003/1845, SI 2004/1770, SI 2004/3168, SI 2005/1541, SI 2005/2114, SI 2006/1493, SI 2007/1898, SI 2009/1182, SI 2009/1895); the Children's Homes Regulations 2001, SI 2001/3967 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 998 et seq); the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968 (amended by SI 2002/865, SI 2004/1031, SI 2004/1771, SI 2004/3168, SI 2005/1541, SI 2005/2114, SI 2006/539, SI 2006/1734, SI 2007/1898); the Fostering Services Regulations 2002, SI 2002/57 (amended by SI 2007/603, SI 2008/640, SI 2009/394); the Care Homes (Wales) Regulations 2002, SI 2002/324 (amended by SI 2002/2622, SI 2003/947, SI 2003/1004, SI 2004/1314, SI 2004/2414, SI 2005/1541, SI 2005/2929, SI 2005/3302, SI 2006/1703, SI 2009/1182, SI 2009/1824, SI 2009/2541); the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325 (see HEALTH SERVICES vol 54 (2008) PARA 748 et seq); the Children's Homes (Wales) Regulations 2002, SI 2002/327 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 998 et seq); the Nurses Agencies Regulations 2002, SI 2002/3212 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 786 et seq); the Residential Family Centres Regulations 2002, SI 2002/3213 (amended by SI 2004/3168, SI 2005/1541, SI 2007/603); the Domiciliary Care Agencies Regulations 2002, SI 2002/3214 (see PARA 1003); the Fostering Services (Wales) Regulations 2003, SI 2003/237 (amended by SI 2003/896); the Residential Family Centres (Wales) Regulations 2003, SI 2003/781 (amended by SI 2005/1541, SI 2005/3302); the Nurses Agencies (Wales) Regulations 2003, SI 2003/2527 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 786 et seq); and the Domiciliary Care Agencies (Wales) Regulations 2004, SI 2004/219 (see PARA 1003).

30 2000 Act s 35. See SI 2001/3965; SI 2001/3967; SI 2001/3968; SI 2002/324; SI 2002/325; SI 2002/327; SI 2002/3212; SI 2002/3213; SI 2002/3214; SI 2003/237; SI 2003/710; SI 2003/781; SI 2003/2527.

31 2000 Act s 36(1), (2), (4). Regulations may provide that the register may not be inspected, or copies of the register or extracts are not to be made available, in prescribed circumstances: s 36(3).

2. Inspections by persons authorised by registration authority

The registration authority¹ may at any time require a person who carries on or manages an establishment or agency to provide it with any information² relating to the establishment or agency which the registration authority considers it necessary or expedient to have for the purposes of its functions³. A person authorised by the registration authority may at any time enter and inspect premises⁴ which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an agency⁵. A person so authorised to enter and inspect premises may (1) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he

thinks appropriate; (2) inspect and take copies of any documents or records (including medical and other personal records)⁶; (3) interview in private the manager or the person carrying on the establishment or agency; (4) interview in private any person working there; (5) interview in private any patient or person accommodated or cared for there who consents to be interviewed⁷. Where the premises in question are used as an establishment and the person authorised to enter and inspect them is a medical practitioner or registered nurse; and has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care, the person authorised may, with the consent of that person, examine him in private⁸. The Secretary of State may by regulations require Her Majesty's Chief Inspector of Education, Children's Services and Skills to arrange for premises which are used as an establishment or for the purposes of an agency to be inspected on such occasions or at such intervals as may be prescribed⁹.

A person so authorised to enter and inspect any premises may seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under Part II of the Care Standards Act 2000¹⁰.

Any person who intentionally obstructs the exercise of any power conferred by the provisions above or fails without a reasonable excuse to comply with any requirement under them, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale¹¹.

1 For the purposes of the Care Standards Act 2000, the registration authority in relation to England is Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1001A). As to the registration authority in Wales, see PARA 1001B.

2 The power to require the provision of information includes power to require the provision of copies of any documents or records (including medical and other personal records); and in relation to records kept by means of a computer, power to require the provision of the records in legible form: Care Standards Act 2000 s 31(1A) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 108(2)).

3 Care Standards Act 2000 s 31(1).

4 A person who proposes to exercise any power of entry or inspection conferred by *ibid* s 31 must if so required produce some duly authenticated document showing his authority to exercise the power: s 31(8).

5 *Ibid* s 31(2).

6 He required to be kept in accordance with regulations under *ibid* Pt II (ss 11-42), the Adoption and Children Act 2002 s 9, the Children Act 1989 s 23(2)(a) or 59(2) or the Adoption (Intercountry Aspects) Act 1999 s 1(3). The powers under head (2) of the text include power to require the manager or the person carrying on the establishment or agency to produce any documents or records, wherever kept, for inspection on the premises; and in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away: 2000 Act s 31(4).

7 *Ibid* s 31(3) (amended by the Adoption and Children Act 2002 Sch 3 para 111; and the 2003 Act s 108(3), Sch 14 Pt 2).

8 2000 Act s 31(5), (6) (s 31(6) amended by the 2003 Act s 108(4), Sch 9 para 23(a)). The power to examine the person in private may be exercised in relation to a person who is incapable of giving consent without that person's consent: 2000 Act s 31(6) (as so amended).

9 *Ibid* s 31(7) (amended by the 2003 Act Sch 9 para 23(b); the Education and Inspections Act 2006 Sch 14 para 48; and, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 27).

10 2000 Act s 32 (amended by the 2003 Act Sch 14 Pt 2).

11 2000 Act s 31(8). As to the standard scale, see PARA 1014 NOTE 11.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1042B. Regulations and standards.

1042B. Regulations and standards.

Regulations impose requirements in relation to the management, staff, premises and conduct of establishments and agencies (other than voluntary adoption agencies)¹. The appropriate minister² must prepare and publish national minimum standards applicable to establishments and agencies³; and must keep such standards under review and may publish amended statements whenever he considers it appropriate to do so⁴. The standards must be taken into account (1) in the making of any decision by the registration authority⁵ under Part II of the Care Standards Act 2000⁶; (2) in any proceedings for the making of an order⁷ for the cancellation of registration, or for the varying or removing of any condition, or imposing an additional condition, in relation to registration; (3) in any proceedings on an appeal against a decision or order under head (2) above; and (4) in certain proceedings⁸ for an offence against a voluntary adoption agency or adoption support agency⁹.

1 See the Care Standards Act 2000 s 22 (amended by the Health and Social Care (Community Health and Standards) Act 2003 ss 105(7), 107(2), Sch 14 Pt 2; the Education and Inspections Act 2006 Sch 14 para 46; and, as from a day to be appointed, by the Health and Social Care Act 2008 Sch 5 para 21); the Care Homes Regulations 2001, SI 2001/3965 (see PARA 1042A.1); the Care Homes (Wales) Regulations 2002, SI 2002/324 (see PARA 1042A.1); the Children's Homes Regulations 2001, SI 2001/3967 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 998 et seq); the Children's Homes (Wales) Regulations 2002, SI 2002/327 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 998 et seq); the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968 (see PARA 1042A.1); and the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325 (see PARA 1042A.1).

2 Ie, in relation to England, the Secretary of State and, in relation to Wales, the National Assembly for Wales: Care Standards Act 2000 s 121(1).

3 Ibid s 23(1). Before issuing a statement, or an amended statement which in his opinion effects a substantial change in the standards, the appropriate minister must consult any persons he considers appropriate: s 23(3).

4 Ibid s 23(2). See also s 23(3), NOTE 3.

5 For the purposes of the 2000 Act, the registration authority in relation to England is Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1001A). As to the registration authority in Wales, see PARA 1001B.

6 Ie the 2000 Act Pt II (ss 11-42).

7 Ie under ibid s 20: see PARA 1042A.1.

8 Ie proceedings against a voluntary adoption agency for an offence under the Adoption Act 1976 s 9(4) (repealed) or against a voluntary adoption agency or adoption support agency for an offence under the Adoption and Children Act 2002 s 9.

9 2000 Act s 23(4) (amended by the Care Standards Act 2000 Sch 3 para 110; and the 2003 Act Sch 9 para 21).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of

registration for providers and managers of health and adult social care in England: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

UPDATE

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1043. Obligation to register.

1043. Obligation to register.

Any person who carries on a residential care home¹ without being registered under Part I of the Registered Homes Act 1984² in respect of that home is guilty of an offence³.

Where the manager or intended manager of a residential care home is not in control of it (whether as owner or otherwise) both the manager or intended manager and the person in control are treated as carrying on or intending to carry on the home and are required to be registered under the Registered Homes Act 1984⁴.

A person who is required to be registered under Part I of the Registered Homes Act 1984 in respect of a small home⁵, and is registered under Part II of that Act⁶ in respect of the same premises, may apply to be registered under Part I as if the home were not a small home⁷.

Where one person only is registered under Part I of the Registered Homes Act 1984 in respect of a residential care home, and that person dies, his personal representatives or his widow or any other relative of his may for a period not exceeding four weeks from his death, or such longer period as the registration authority⁸ sanctions, carry on the home without being registered in respect of it⁹.

1 As to the meaning of 'residential care home' see PARA 1042 ante.

2 Ie the Registered Homes Act 1984 Pt I (ss 1-20) (as amended).

3 Ibid s 2. A person guilty of an offence under s 2 is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale: s 46(1). As to the standard scale see PARA 1014 note 11 ante. As to offences generally see PARA 1054 post.

4 Ie under ibid Pt I (as amended): s 3.

5 For the meaning of 'small home' see PARA 1042 note 8 ante.

6 Ie under the Registered Homes Act 1984 Pt II (ss 21-38) (repealed).

7 Ibid s 4(1) (s 4 substituted by the Registered Homes (Amendment) Act 1991 s 1(1), (3)). If he does so, the provisions of the Registered Homes Act 1984 Pt I (as amended) have effect as in relation to a home which is not a small home: s 4(2) (as so substituted).

8 For the meaning of 'registration authority' see PARA 1044 note 3 post.

9 Registered Homes Act 1984 s 6.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1044. Registration of residential care homes.

1044. Registration of residential care homes.

An application for registration¹ of a residential care home² must be made to the registration authority³. An application for registration must be accompanied by a registration fee, of such amount as the Secretary of State may by regulations prescribe⁴. On receipt of an application for registration and of the registration fee, unless the application is refused⁵, the registration authority must register the applicant in respect of the home named in the application and issue to him a certificate of registration⁶.

The certificate of registration issued in respect of a home other than a small home must be kept affixed in a conspicuous place in the home⁷.

1 Under the Registered Homes Act 1984 Pt I (ss 1-20) (as amended). As to the information to be supplied with an application see PARA 1045 post.

2 As to the meaning of 'residential care home' see PARA 1042 ante.

3 Registered Homes Act 1984 s 5(1). 'Registration authority', in relation to a residential care home, means the local social services authority for the area in which the home is situated: s 20(1). 'Local social services authority' means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (see PARA 1005 ante); Registered Homes Act 1984 s 55. In relation to a residential care home in the Isles of Scilly, the Council of the Isles of Scilly is the registration authority: s 20(2).

4 Ibid s 5(1). As to the Secretary of State see PARA 1001 note 6 ante. Any regulations or orders under the Registered Homes Act 1984 must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see s 56. At the date at which this volume states the law, the registration fee to accompany an application for registration is: (1) in the case of an application in respect of the manager or intended manager of the home who is not the person in control of it (whether as owner or otherwise), £230; (2) in the case of an application in respect of the person in control of the home, £840; and (3) in the case of an application for registration under Pt I (as amended) of a person in respect of a small home, £230: Residential Care Homes Regulations 1984, SI 1984/1345, reg 3 (amended by SI 1992/2007; SI 1992/2241). In the case of an application for registration in respect of a small home the registration authority may waive the whole or part of the registration fee: Registered Homes Act 1984 s 5(2A) (added by the Registered Homes (Amendment) Act 1991 s 1(1), (4)). For the meaning of 'small home' see PARA 1042 note 8 ante.

5 As to the power to refuse an application see PARA 1048 post. As to the power to serve a notice imposing conditions see PARA 1047 post; and as to an applicant's right to make representations see PARA 1051 post.

6 Registered Homes Act 1984 s 5(2).

7 Ibid s 5(6) (amended by the Registered Homes (Amendment) Act 1991 s 1(1), (4)). If default is made in complying with this requirement, any person registered in respect of the home is guilty of an offence: Registered Homes Act 1984 s 5(6) (as so amended). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale and to a further fine not exceeding £5 for each day on which the offence continues after conviction: s 47(1). As to the standard scale see PARA 1014 note 11 ante. As to offences generally see PARA 1054 post.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of

registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

1044 Registration of residential care homes

NOTE 4--In head (1), fee now £261, in head (2), fee now £952, and in head (3), fee now £261: SI 1984/1345 reg 3 (amended by SI 1998/902).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1045. Information to be provided on application for registration.

1045. Information to be provided on application for registration.

On any application for registration under Part I of the Registered Homes Act 1984¹ the applicant must supply in writing to the registration authority² the information listed below, and such other information as the registration authority may reasonably require³.

Where the application for registration is made by the manager or intended manager of the home⁴ and he is not the person in control of it (whether as owner or otherwise) he must supply in writing to the registration authority the following information:

- 35 (1) his full name, date of birth, address and telephone number (if any)⁵;
- 36 (2) details of his professional or technical qualifications and experience (if any) of running a home⁶;
- 37 (3) the names and addresses of his previous employers and of two referees⁷;
- 38 (4) the name, address and telephone number of the home in respect of which registration is required⁸; and
- 39 (5) if the registration authority so requests, a report by a registered medical practitioner on the state of the applicant's health⁹.

Where the application for registration is made by the person in control of the home, that person must, except in the case of a company, society, association or other body or firm¹⁰, supply to the registration authority the following information:

- 40 (a) his full name, date of birth, address and telephone number (if any)¹¹;
- 41 (b) details of his professional or technical qualifications and experience (if any) of running a home¹²;
- 42 (c) the names and addresses of his previous employers and of two referees¹³;
- 43 (d) the name, address and telephone number of the home in respect of which registration is required¹⁴; and
- 44 (e) if the registration authority so requests, a report by a registered medical practitioner on the state of the applicant's health¹⁵.

Where the application for registration is made by the person in control of the home, that person must, in the case of a company, society, association or other body or firm, supply to the registration authority the following information:

- 45 (i) the address of the registered office or principal office of the body or firm and the full names, dates of birth and addresses of the chairman and secretary of the company, or other persons responsible for the management of the body or the partners of the firm¹⁶; and
- 46 (ii) if the registration authority so requests, details of their professional or technical qualifications and experience (if any) of running a home¹⁷.

An applicant for registration who is the intended manager of the home (whether or not he is in control of it) must supply in writing to the registration authority details of his criminal convictions, if any¹⁸; and where the registration authority asks him for details of any criminal

convictions which are spent convictions¹⁹, supply in writing to the registration authority details of those convictions²⁰.

An applicant who is the person in control of the home must also supply to the registration authority the following information:

- 47 (a) the name, address and telephone number of the home in respect of which registration is required²¹;
- 48 (b) the address of any other home or of any nursing home or mental nursing home²² or any voluntary home²³, or any children's home²⁴ in which the applicant has or had a business interest, and the nature and extent of his interest²⁵;
- 49 (c) the situation of the home and its form of construction and, where requested by the registration authority, details of any comments made by the local fire authority²⁶ or local environmental health authority²⁷;
- 50 (d) the accommodation available for residents and for persons employed at the home²⁸;
- 51 (e) the date on which the home was established or is to be established²⁹;
- 52 (f) whether any other business is or will be carried out in the same premises as the home and whether the home is also required to be registered under Part II of the Registered Homes Act 1984³⁰;
- 53 (g) the number, sex and categories of residents for whom the home is proposed to be used³¹;
- 54 (h) the full names, dates of birth, qualifications and experience (if any) of persons employed, or proposed to be employed, in the management of the home³² and whether they reside or are to reside in the home³³;
- 55 (i) the number, sex, position and relevant qualifications of staff employed or proposed to be employed at the home³⁴, distinguishing between resident staff and non-resident staff and those employed on a full-time and part-time basis and indicating the number of hours per week for which it is intended to employ part-time staff³⁵;
- 56 (j) a statement of the aims and objectives of the home, of the care and attention to be provided in the home and of any arrangements for the supervision of residents³⁶;
- 57 (k) details of any special arrangements made or other services available for any particular category of resident and, except in the case of a small home, details of equipment and facilities and services to be provided in the home³⁷;
- 58 (l) the arrangements made or proposed to be made for medical and dental supervision and treatment and for nursing care in cases of minor ailments³⁸;
- 59 (m) the arrangements for the handling and administration of medicines³⁹;
- 60 (n) details of the scale of charges payable by residents⁴⁰;
- 61 (o) in the case of a small home, the number of persons who are participating in the management or running of the home or providing personal care in the home on an informal basis (including any such person who is a relative of the person registered) and their sex, relevant qualifications and position in the home⁴¹.

1 le the Registered Homes Act 1984 Pt I (ss 1-20) (as amended).

2 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

3 Residential Care Homes Regulations 1984, SI 1984/1345, reg 2.

4 'Home' means a residential care home: *ibid* reg 1. As to the meaning of 'residential care home' see PARA 1042 ante.

5 *Ibid* reg 2, Sch 1 para 1(a). An applicant for registration under the Registered Homes Act 1984 Pt I (as amended) must, if the registration authority so requires, supply to that authority such birth certificate and such other documentary evidence as is specified by that authority as being necessary to substantiate the information

supplied in accordance with the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 1(a): reg 2A (added by SI 1991/2502).

6 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 1(b).

7 Ibid Sch 1 para 1(c).

8 Ibid Sch 1 para 1(d).

9 Ibid Sch 1 para 1(e).

10 As to which see the text and notes 16-17 *infra*.

11 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 2(a)(i). An applicant for registration under the Registered Homes Act 1984 Pt I (as amended) must, if the registration authority so requires, supply to that authority such birth certificate and such other documentary evidence as is specified by that authority as being necessary to substantiate the information supplied in accordance with the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 2(a)(i): reg 2A (added by SI 1991/2502).

12 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 2(a)(ii).

13 Ibid Sch 1 para 2(a)(iii).

14 Ibid Sch 1 para 2(a)(iv). In the case of a small home, the person in control must also supply (if different) the name, address and telephone number of the person to whom inquiries are to be made: Sch 1 para 2(a)(iv) (amended by SI 1992/2241). For the meaning of 'small home' see PARA 1042 note 8 *ante*.

15 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 2(a)(v).

16 Ibid Sch 1 para 2(b)(i).

17 Ibid Sch 1 para 2(b)(ii).

18 Ibid Sch 1 para 2A(a) (Sch 1 para 2A added by SI 1991/2502).

19 *Ie* within the meaning of the Rehabilitation of Offenders Act 1974 s 1 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660). If the authority does ask for details of spent convictions, it must at the same time inform the applicant that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions are to be disclosed: Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 2A(b) (as added: see note 18 *supra*).

20 Ibid Sch 1 para 2A(b) (as added: see note 18 *supra*).

21 Ibid Sch 1 para 3(a).

22 *Ie* within the meaning of the Registered Homes Act 1984 Pt II (ss 21-38) (repealed).

23 *Ie* within the meaning of the Child Care Act 1980 (repealed: see now the Children Act 1989; para 1042 note 14 *ante*; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 976).

24 *Ie* within the meaning of the Children's Homes Act 1982 (repealed: see now the Children Act 1989; para 1042 note 14 *ante*; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 983).

25 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 3(b).

26 'Fire authority', in relation to any home, means the authority discharging, in the area in which the home is situated, the function of fire authority under the Fire Services Act 1947: Residential Care Homes Regulations 1984, SI 1984/1345, reg 1. See FIRE SERVICES vol 18(2) (Reissue) PARA 17 *et seq*.

The person registered must, except in respect of a small home, at such times as may be agreed with the fire authority consult that authority on fire precautions in the home: reg 8 (amended by SI 1992/2241). 'Person registered' means any person registered in respect of the home: Residential Care Homes Regulations 1984, SI 1984/1345, reg 1.

27 Ibid Sch 1 para 3(c). An applicant for registration in respect of a small home need not supply information in regard to these matters: reg 2 (amended by SI 1992/2241).

28 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 3(d). 'Resident' means any person in the home who is in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder: reg 1.

29 Ibid Sch 1 para 3(e). An applicant for registration in respect of a small home need not supply information in regard to these matters: reg 2 (as amended: see note 27 supra).

30 Ie under the Registered Homes Act 1984 Pt II (repealed): Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 3(f).

31 Ibid Sch 1 para 3(g) (amended by SI 1986/457). The various categories are to be indicated by reference to the following code, which is set out in the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 3(g) (as so amended):

- 48 (1) old age (not falling within any other of the following categories): I;
- 49 (2) mental disorder, other than mental handicap, past or present: MP;
- 50 (3) mental handicap: MH;
- 51 (4) alcohol dependence, past or present: A;
- 52 (5) drug dependence, past or present: D;
- 53 (6) physical disablement: PH;
- 54 (7) if the resident is over 65 years of age, but not within the category of old age, add: E;
- 55 (8) if the resident is a child, add: C.

32 This information need not be given in the case of a person to whom ibid Sch 1 para 1 applies (see the text and notes 5-9 supra): Sch 1 para 3(h).

33 Ibid Sch 1 para 3(h).

34 Ie excluding any teaching staff and persons employed, or proposed to be employed, in the management of the home: ibid Sch 1 para 3(i).

35 Ibid Sch 1 para 3(i).

36 Ibid Sch 1 para 3(j).

37 Ibid Sch 1 para 3(k) (substituted by SI 1992/2241).

38 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 1 para 3(l). An applicant for registration in respect of a small home need not supply information in regard to these matters: reg 2 (as amended: see note 27 supra).

39 Ibid Sch 1 para 3(m). An applicant for registration in respect of a small home need not supply information in regard to these matters: reg 2 (as amended: see note 27 supra).

40 Ibid Sch 1 para 3(n). An applicant for registration in respect of a small home need not supply information in regard to these matters: reg 2 (as amended: see note 27 supra).

41 Ibid Sch 1 para 3(o) (added by SI 1992/2241).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by

the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1046. Registers kept by a registration authority.

1046. Registers kept by a registration authority.

The registers kept by a registration authority¹ for the purposes of Part I of the Registered Homes Act 1984² must be available for inspection at all reasonable times, and any person inspecting any such register is entitled to make copies of entries in the register on payment of such reasonable fee as the registration authority may determine³. The registers must contain the specified particulars⁴, which are as follows:

- 62 (1) the full name and address of the person registered⁵ in respect of the home⁶ and, where both the manager and person in control of the home are registered in respect of it, their full names and addresses⁷;
- 63 (2) where the person registered is a company, society, association or other body or firm, the address of its registered office or principal office and the full names and addresses of the directors, or other persons responsible for the management of that body, or the partners of the firm⁸;
- 64 (3) the name, address and telephone number of the home and, in the case of a small home⁹, (if different) the name, address, and telephone number of the person to whom inquiries are to be made¹⁰;
- 65 (4) the number, sex and categories of residents (excluding persons registered or persons employed at the home and their relatives)¹¹;
- 66 (5) the date of registration and of the issue of the certificate of registration¹² and, where applicable, the date of any cancellation of registration¹³;
- 67 (6) the details of any conditions imposed on registration and of any addition to, or variation of, those conditions¹⁴;
- 68 (7) whether the certificate of registration issued relates to a small home¹⁵.

1 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

2 Ie the Registered Homes Act 1984 Pt I (ss 1-20) (as amended).

3 Ibid s 7.

4 Ie the particulars specified in the Residential Care Homes Regulations 1984, SI 1984/1345, reg 7, Sch 3: reg 7.

5 For the meaning of 'person registered' see PARA 1045 note 26 ante.

6 For the meaning of 'home' see PARA 1045 note 4 ante.

7 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 3 para 1.

8 Ibid Sch 3 para 2.

9 For the meaning of 'small home' see PARA 1042 note 8 ante.

10 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 3 para 3 (amended by SI 1992/2241).

11 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 3 para 4 (amended by SI 1986/457). For the meaning of 'resident' see PARA 1045 note 28 ante. The various categories are to be indicated by reference to the following code, which is set out in the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 3 para 4 (as so amended):

56 (1) old age (not falling within any other of the following categories): I;

- 57 (2) mental disorder, other than mental handicap, past or present: MP;
 - 58 (3) mental handicap: MH;
 - 59 (4) alcohol dependence, past or present: A;
 - 60 (5) drug dependence, past or present: D;
 - 61 (6) physical disablement: PH;
 - 62 (7) if the resident is over 65 years of age, but not within the category of old age, add: E;
 - 63 (8) if the resident is a child, add: C.
- 12 As to certificates of registration see PARA 1044 ante.
- 13 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 3 para 5. As to cancellation of registration see PARA 1049 post.
- 14 Ibid Sch 3 para 6. As to the imposition of conditions see PARA 1047 post.
- 15 Ibid Sch 3 para 7 (added by SI 1992/2241).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1047. Conditions attaching to registrations of residential care homes.

1047. Conditions attaching to registrations of residential care homes.

It is a condition of the registration of any person in respect of a residential care home¹ that the number of persons for whom residential accommodation² with both board and personal care³ is provided in the home at any one time (excluding persons carrying on or employed at the home and their relatives) does not exceed such number as may be specified in the certificate of registration⁴.

The registration may also be subject to such other conditions, specified in the certificate, as the registration authority⁵ considers appropriate for regulating the age, sex or category of persons who may be received in the home⁶. The registration authority may from time to time vary any condition for the time being in force in respect of a home, or impose an additional condition, either on the application of a person registered in respect of it or without such an application⁷. If any condition for the time being in force in respect of a home is not complied with, any person registered in respect of the home is guilty of an offence⁸.

1 As to the meaning of 'residential care home' see PARA 1042 ante.

2 As to the meaning of 'residential accommodation' see PARA 1042 note 3 ante.

3 For the meaning of 'personal care' see PARA 1042 note 4 ante.

4 Registered Homes Act 1984 s 5(3). As to certificates of registration see PARA 1044 ante.

A certificate which specified different numbers at different times would not comply with the statutory requirements: *Avon County Council v Lang* [1990] COD 365. A registration authority, in deciding whether to impose conditions on the registration of a residential care home, is not required to base its decision on the criteria contained in the Registered Homes Act 1984 s 9 (as amended) (see PARA 1048 post): *Isle of Wight County Council v Humphreys* (1991) 90 LGR 186.

5 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

6 Registered Homes Act 1984 s 5(3). The conditions attached to a certificate must be in a simple and concise form and free from uncertainty and ambiguity; and nothing in the statutory wording precludes consideration of the characteristics of particular residents: *Avon County Council v Lang* [1990] COD 365. See further PARA 1042 note 7 ante.

7 Registered Homes Act 1984 s 5(4).

8 Ibid s 5(5). A person guilty of an offence under this provision is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale: s 48. As to the standard scale see PARA 1014 note 11 ante. As to offences generally see PARA 1054 post.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1048. Refusal of registration.

1048. Refusal of registration.

The registration authority¹ may refuse to register an application for registration in respect of a residential care home², other than a small home³, if it is satisfied:

- 69 (1) that the applicant or any other person concerned or intended to be concerned in carrying on the home is not a fit person to be concerned in carrying on a residential care home⁴;
- 70 (2) that, for reasons connected with their situation, construction, state of repair, accommodation, staffing, or equipment, the premises used or intended to be used for the purposes of the home, or any other premises used or intended to be used in connection with it, are not fit to be so used⁵; or
- 71 (3) that the way in which it is intended to carry on the home is such as not to provide services or facilities reasonably required⁶.

The registration authority may refuse to register an applicant for registration in respect of a small home only if it is satisfied that he or any other person concerned or intended to be concerned in carrying on the home is not a fit person to be concerned in carrying on a residential care home⁷.

1 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

2 As to the meaning of 'residential care home' see PARA 1042 ante.

3 For the meaning of 'small home' see PARA 1042 note 8 ante.

4 Registered Homes Act 1984 s 9(1)(a) (s 9(1) amended by the Registered Homes (Amendment) Act 1991 s 1(1), (7)). See note 6 infra.

5 Registered Homes Act 1984 s 9(1)(b) (as amended: see note 4 supra). See note 6 infra.

6 Ibid s 9(1)(c) (as amended: see note 4 supra). Heads (1), (2), and (3) in the text are not mutually exclusive: *R v Registered Homes Tribunal, ex p Hertfordshire County Council* (1996) 95 LGR 76. A registration authority is entitled to refuse registration on the grounds that a proposed registered home would not be financially viable: see *R v Registered Homes Tribunal, ex p Hertfordshire County Council* supra.

7 Registered Homes Act 1984 s 9(2) (added by the Registered Homes (Amendment) Act 1991 s 1(1), (7)).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1049. Cancellation of registration.

1049. Cancellation of registration.

The registration authority¹ may cancel the registration of a person in respect of a residential care home²:

- 72 (1) on any ground which would entitle the authority to refuse an application for his registration in respect of it³;
- 73 (2) on the ground that the annual fee⁴ in respect of the home has not been paid on or before the due date⁵;
- 74 (3) in the case of a small home, on the ground that the annual return has not been duly made⁶;
- 75 (4) on the ground that he has been convicted of an offence under Part I of the Registered Homes Act 1984⁷ or any regulations made under it in respect of that or any other residential care home⁸;
- 76 (5) on the ground that any other person has been convicted of such an offence in respect of that home⁹; or
- 77 (6) on the ground that any condition for the time being in force in respect of the home has not been complied with¹⁰.

1 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

2 As to the meaning of 'residential care home' see PARA 1042 ante.

3 Registered Homes Act 1984 s 10(a). As to the refusal of registration see PARA 1048 ante. Where a residential care home had been registered because its running was entrusted to the management of a company regarded as a fit person, the departure of that company from the home could justify the cancellation of the registration: see *R v Humberside County Council, ex p Bogdal* (1992) Times, 1 June.

4 The Secretary of State may by regulations (1) require persons registered in respect of residential homes to pay an annual fee of such amount as the regulations may specify; and (2) specify when the fee is to be paid: Registered Homes Act 1984 s 8(1) (renumbered by the Registered Homes (Amendment) Act 1991 s 1(1), (5)). In the case of registration in respect of a small home, the registration authority may waive the whole or part of the annual fee: see the Registered Homes Act 1984 s 8(2) (added by the Registered Homes (Amendment) Act 1991 s 1(1), (5)). As to the Secretary of State see PARA 1001 note 6 ante. For the meaning of 'small home' see PARA 1042 note 8 ante.

A person registered in respect of a residential care home as being the person in control of it must pay an annual fee within one month of the date on which the certificate of registration was issued and thereafter in each year no later than the day before the anniversary of that date: Residential Care Homes Regulations 1984, SI 1984/1345, reg 5(1) (reg 5 substituted by SI 1992/2241).

In the case of a small home, the annual fee at the date at which this volume states the law is £30: Residential Care Homes Regulations 1984, SI 1984/1345, reg 5(3) (as so substituted). In the case of a home which is not a small home, the annual fee at that date is an amount equal to £41 multiplied by the maximum number of persons specified in the certificate of registration in respect of the home (see PARA 1047 ante): reg 5(2) (as so substituted). Where the home is not a small home, but an annual fee for a small home was payable for it in respect of the immediately preceding year because it was then a small home, and no application for re-registration has been made (with the appropriate registration fee), the amount of the annual fee determined in accordance with reg 5(2) (as substituted) is increased by £610: reg 5(4) (as so substituted).

5 Registered Homes Act 1984 s 10(b).

6 In accordance with regulations under *ibid* s 8A (as added) (see PARA 1052 post): s 10(bb) (added by the Registered Homes (Amendment) Act 1991 s 1(1), (8)). As to the annual return in respect of a small home see PARA 1052 post.

7 le the Registered Homes Act 1984 Pt I (ss 1-20) (as amended). As to offences under Pt I (as amended) see PARAS 1043-1044, 1047 ante, 1055, 1059 post. As to offences generally see PARA 1054 post.

8 Ibid s 10(c)(i).

9 Ibid s 10(c)(ii).

10 Ibid s 10(c)(iii). As to the imposition of conditions see PARA 1047 ante. A registration authority may give notice of a proposal to cancel (see PARA 1051 post) whilst simultaneously utilising the urgent procedure for cancellation (see PARA 1050 post): *Lyons v East Sussex County Council* (1987) 86 LGR 369 at 379, CA, obiter per Glidewell LJ.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

1049 Cancellation of registration

NOTE 4--In the case of a small home, fee now £34: SI 1984/1345 reg 5(3) (amended by SI 1998/902). In the case of a home which is not a small home, the multiplier now £46: SI 1984/1345 reg 5(2) (amended by SI 1998/902). In the case of a home which is not a small home but in respect of which an annual fee for a small home was payable in the immediately preceding year, the amount of the annual fee determined in accordance with SI 1984/1345 reg 5(2) is now increased by £691: reg 5(4) (amended by SI 1998/902).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1050. Urgent procedure.

1050. Urgent procedure.

If the registration authority¹ applies to a justice of the peace² for an order cancelling the registration of a person in respect of a residential care home³, or varying any condition for the time being in force in respect of a home, or imposing an additional condition, and it appears to the justice of the peace that there will be a serious risk to the life, health or well-being of the residents in the home unless the order is made, he may make the order⁴. An application for an order may be made ex parte and must be supported by a written statement of the registration authority's reasons for making the application⁵. If such an order is made, the registration authority must serve⁶ on any person registered in respect of the home, as soon as is practicable after the making of the order, notice of the making of the order and of its terms, and a copy of the statement of the authority's reasons which supported the application for the order⁷.

1 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

2 As to justices of the peace see MAGISTRATES. Where a registration authority makes an application under the Registered Homes Act 1984 s 11, there is no requirement to give the person registered notice of the proposal: see PARA 1051 post. A registration authority may, however, make such an application whilst simultaneously giving notice of a proposal to cancel registration pursuant to s 10 (as amended) (see PARAS 1049 ante, 1051 post): *Lyons v East Sussex County Council* (1987) 86 LGR 369 at 379, CA, obiter per Glidewell LJ.

3 As to the meaning of 'residential care home' see PARA 1042 ante.

4 Registered Homes Act 1984 s 11(1). The order must be in writing: s 11(3). The cancellation, variation or imposition has effect from the date on which the order is made: s 11(1).

The registration authority must show that one or other of the grounds contained in s 10 (as amended) is made out (as to which see PARA 1049 ante) and it must appear to the magistrate that there would be a serious risk to the life, health or well-being of the residents in the home unless the order is made: *Lyons v East Sussex County Council* (1987) 86 LGR 369, CA. The magistrate considering making the order must ask if there will be a serious risk if he does not make the order: *Hillingdon London Borough Council v McLean* (1989) 88 LGR 49.

5 Registered Homes Act 1984 s 11(2).

6 As to service of documents see PARA 1053 post.

7 Registered Homes Act 1984 s 11(4). As to appeals against orders made under s 11 see PARA 1051 post.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1051. Notice of proposal and decision; representations and appeals.

1051. Notice of proposal and decision; representations and appeals.

Where a person applies for registration under Part I of the Registered Homes Act 1984¹, and the registration authority² proposes to grant his application, the authority must give him written notice of its proposal and of the conditions subject to which it proposes to grant his application³. The registration authority must also give an applicant notice of a proposal to refuse his application⁴; and, except where it makes an application using the urgent procedure⁵, the authority must give any person registered in respect of a residential care home notice of a proposal to cancel the registration⁶, to vary any condition for the time being in force in respect of the home, or to impose any additional condition⁷. A notice under these provisions must give the registration authority's reasons for its proposal⁸.

The notice must also state that within 14 days of service of the notice any person on whom it is served may in writing require the registration authority to give him an opportunity to make representations to it concerning the matter⁹. Where such a notice has been served, the registration authority must not determine the matter until (1) any person on whom the notice was served has made representations concerning the matter; or (2) the period during which any such person could have required the authority to give him an opportunity to make representations has elapsed without it being so required; or (3) certain conditions are satisfied¹⁰. Representations may be made, at the option of the person making them, either in writing or orally¹¹. If the person seeking to make representations informs the registration authority that he desires to make oral representations, it must give him an opportunity of appearing before and of being heard by a committee or sub-committee of the registration authority¹².

If the registration authority decides to adopt the proposal, it must serve notice in writing of its decision on any person on whom it was required to serve notice of its proposal¹³, together with a notice explaining the right of appeal¹⁴. If no appeal is brought, a decision¹⁵ of a registration authority does not take effect until the expiration of the period allowed for appeal¹⁶; and if an appeal is brought, a decision does not take effect until the appeal is determined or abandoned¹⁷.

An appeal against a decision of a registration authority or an order made by a justice of the peace¹⁸ lies to a registered homes tribunal¹⁹. An appeal must be brought by notice in writing given to the registration authority²⁰. No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order²¹. On an appeal against a decision of a registration authority or an order made by a justice of the peace, the tribunal may confirm the decision or order, or direct that the decision is not to have effect or that the order is to cease to have effect²². A tribunal also has power on an appeal against a decision or order to vary any condition for the time being in force in respect of the home to which the appeal relates, to direct that any such condition is to cease to have effect, or to direct that any such condition as it thinks fit is to have effect in respect of the home²³.

A registration authority must comply with any direction given by a tribunal under these provisions²⁴.

1 le the Registered Homes Act 1984 Pt I (ss 1-20) (as amended).

2 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

3 Registered Homes Act 1984 s 12(1). As to the service of notice see PARA 1053 post.

The registration authority need not give notice of such a proposal if it proposes to grant the application subject only to conditions which (1) the applicant specified in the application; or (2) the authority and the applicant have subsequently agreed: s 12(2).

4 Ibid s 12(3).

5 See PARA 1050 ante.

6 As to cancellation of registration see PARA 1049 ante.

7 Registered Homes Act 1984 s 12(4). As to the imposition of conditions see PARA 1047 ante.

8 Ibid s 12(5).

9 Ibid s 13(1).

10 Ibid s 13(2). The conditions are (1) that a person on whom the notice was served has required the registration authority to give him an opportunity to make representations to it concerning the matter; (2) that the registration authority has allowed him a reasonable period to make his representations; and (3) that he has failed to make them within that period: s 13(3).

11 Ibid s 13(4).

12 Ibid s 13(5).

13 Ibid s 14(1).

14 Ibid s 14(2). As to appeals see the text and notes 19-24 infra.

15 This does not include a decision to grant an application for registration subject only to the conditions specified in note 3 supra, or a decision to refuse an application for registration: see *ibid* s 14(3).

16 Ie the period of 28 days referred to in *ibid* s 15(3) (see the text to note 21 infra).

17 Ibid s 14(3).

18 Ie a decision under *ibid* s 11 (see PARA 1050 ante).

19 Ibid s 15(1). As to registered homes tribunals see PARA 1062 post. There is no right of appeal to a registered homes tribunal against refusal to vary a condition of registration: *Coombs v Hertfordshire County Council* (1991) 89 LGR 774.

As to transitional provisions concerning appeals against orders made under earlier legislation see the Residential Care Homes Regulations 1984, SI 1984/1345, reg 23.

20 Registered Homes Act 1984 s 15(2).

21 Ibid s 15(3).

22 Ibid s 15(4), (5).

23 Ibid s 15(6).

24 Ibid s 15(7).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by

the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1052. Annual return in respect of a small home.

1052. Annual return in respect of a small home.

The Secretary of State¹ may by regulations require a person registered under Part I of the Registered Homes Act 1984² in respect of a small home³ to make an annual return to the registration authority⁴.

The person registered must make an annual return containing the following information⁵:

- 78 (1) the name, address and telephone number of the home, and the name and address of the person registered, indicating which (if any) of these items of information is different from that previously supplied⁶;
- 79 (2) the number, sex and category of residents cared for in the home, indicating which (if any) of these items of information is different from that previously supplied⁷;
- 80 (3) the number of residents who have left the home since the later of the date of registration or the date when information was previously supplied⁸;
- 81 (4) the date and cause of death of any resident who has died in the home since the later of the date of registration or the date when information was previously supplied⁹;
- 82 (5) the number of residents who are permanently confined to bed indicating any change since the later of the date of registration or the date when information was previously supplied¹⁰;
- 83 (6) the full names and dates of birth of the persons other than residents who are living in the home, whether or not employed in the management or running of the home or in the provision of care in the home, indicating which (if any) of these items of information is different from that previously supplied¹¹;
- 84 (7) the full names and dates of birth, qualifications and experience of the persons employed in the management or running of the home or in the provision of care in the home, whether living in the home or not, and of the persons assisting informally in the management or running of the home or in the provision of care in the home but not living in the home, indicating which (if any) of these items of information is different from that previously supplied¹²;
- 85 (8) any criminal convictions details of which have not been previously supplied¹³.

The annual return in respect of a small home must be made each year on or before the anniversary of the date on which the certificate of registration relating to the home was issued, and must be (a) in the case of the first return, for the period beginning with the date on which the application was made and ending with the date on which the return is made; and (b) in the case of subsequent returns, for the period since the last return was made until the date on which the subsequent return is made¹⁴.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 Ie the Registered Homes Act 1984 Pt I (ss 1-20) (as amended).

3 For the meaning of 'small home' see PARA 1042 note 8 ante.

4 Registered Homes Act 1984 s 8A(1) (s 8A added by the Registered Homes (Amendment) Act 1991 s 1(1), (6)). The regulations may make provision as to the contents of the return and the period in respect of which and

date by which it is to be made: Registered Homes Act 1984 s 8A(2) (as so added). For the meaning of 'registration authority' see PARA 1044 note 3 ante.

5 Residential Care Homes Regulations 1984, SI 1984/1345, reg 25(1) (reg 25 added by SI 1992/2241).

6 Residential Care Homes Regulations 1984, SI 1984/1345, reg 25(1) (as added: see note 5 supra); Sch 4 para 1(a) (Sch 4 added by SI 1992/2241). 'Previously supplied' means (1) where no annual return has previously been made, supplied in the application for registration; (2) in relation to any other return, supplied in the last annual return made: Residential Care Homes Regulations 1984, SI 1984/1345, Sch 4 para 2 (as so added).

7 Ibid Sch 4 para 1(b) (as added: see note 6 supra).

8 Ibid Sch 4 para 1(c) (as added: see note 6 supra).

9 Ibid Sch 4 para 1(d) (as added: see note 6 supra).

10 Ibid Sch 4 para 1(e) (as added: see note 6 supra).

11 Ibid Sch 4 para 1(f) (as added: see note 6 supra).

12 Ibid Sch 4 para 1(g) (as added: see note 6 supra).

13 Ibid Sch 4 para 1(h) (as added: see note 6 supra). Details of spent convictions must be included where the registration authority (1) asks for details of any convictions which are spent convictions within the meaning of the Rehabilitation of Offenders Act 1974 s 1 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 661); and (2) at the same time informs the person registered that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions are to be disclosed: see the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 4 para 1(h) (as so added).

14 Ibid reg 25(2) (as added: see note 5 supra).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1053. Service of documents.

1053. Service of documents.

Any notice or other document required under the Registered Homes Act 1984 to be served on a person carrying on, or intending to carry on, a residential care home¹ may be served on him by being delivered personally to him, or being sent by post to him in a registered letter or by the recorded delivery service². Any such notice or other document required to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm³.

Any notice which is required under the regulations concerning residential care homes⁴ to be given to any person must be in writing and may be served on him by being delivered personally to him or by being sent by post to him in a registered letter or by the recorded delivery service⁵.

1 As to the meaning of 'residential care home' see PARA 1042 ante.

2 Registered Homes Act 1984 s 54(1). Service by post is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: see the Interpretation Act 1978 s 7. For these purposes, a letter to a person carrying on a residential care home enclosing a notice or other document under the Registered Homes Act 1984 is deemed to be properly addressed if it is addressed to him at the home: s 54(2).

3 Ibid s 54(3). For these purposes, and without prejudice to s 54(2) (see note 2 supra), the proper address of a person is (1) in the case of a secretary or clerk of a body corporate, that of the registered or principal office of that body; (2) in the case of a partner of a firm, that of the principal office of the firm; and (3) in any other case, the last known address of the person to be served: s 54(4).

4 Ie the Residential Care Homes Regulations 1984, SI 1984/1345 (as amended).

5 Ibid reg 21(1). For the purposes of the Interpretation Act 1978 s 7 (see note 2 supra), a letter to a person registered enclosing a notice under the Residential Care Homes Regulations 1984, SI 1984/1345, reg 20 (as amended) (see PARA 1054 post) is deemed to be properly addressed if it is addressed to him at the home: reg 21(2).

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(1) REGISTRATION/1054. Offences.

1054. Offences.

Where an offence under the Registered Homes Act 1984 or any regulations under it¹ which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly².

In any proceedings for an offence under Part I of the Registered Homes Act 1984³, it is a defence for any person charged to prove (1) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and (2) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control⁴.

Except where the registration authority⁵ has applied for an order using the urgent procedure⁶ or while such an order is in force, if the authority considers that the person registered has contravened or failed to comply with any of certain regulations⁷, the authority may serve a notice on the person registered specifying (a) in what respect in its opinion the person registered has failed or is failing to comply with the requirements of that regulation; (b) what action, in the opinion of the authority, the person registered should take so as to comply with the regulation; and (c) the period, not exceeding three months, within which the person registered should take action⁸. Where such notice has been given and the period specified in the notice, beginning with the date of the notice, has expired, the person registered who contravenes or fails to comply with any provision of the regulations mentioned in the notice is guilty of an offence⁹.

1 Ie the Residential Care Homes Regulations 1984, SI 1984/1345 (as amended): see PARA 1055 post.

2 Registered Homes Act 1984 s 52. As the criminal liability of corporations see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

3 Ie *ibid* Pt I (ss 1-20) (as amended).

4 Ibid s 18(1). If, however, the defence involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged is not, without leave of the court, entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession: s 18(2).

5 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

6 See PARA 1050 ante.

7 Ie the Residential Care Homes Regulations 1984, SI 1984/1345, reg 6 (as amended) (see PARA 1061 post); reg 10 (as amended) (see PARA 1056 post); reg 11 (as amended) (see PARA 1056 post); regs 13, 14, 15, 16 (see PARA 1060 post); and reg 19 (see PARA 1058 post).

8 Ibid reg 20(1) (amended by SI 1986/457); Residential Care Homes Regulations 1984, SI 1984/1345, reg 20(3). As to the service of notices see PARA 1053 ante.

9 Ibid reg 20(2). A person guilty of an offence against these regulations is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale: Registered Homes Act 1984 s 49. As to the standard scale see PARA 1014 note 11 ante.

UPDATE

1042-1054 Registration

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. The Health and Social Care Act 2008 Pt 1 Ch 2 (ss 8-44) creates a new system of registration for providers and managers of health and adult social care: see PARA 1001A. For provision in relation to registration of any care homes that are regulated by the Chief Inspector of Education, Children's Services and Skills, and in relation to the registration of care homes in Wales, see PARAS 1042A, 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1055. Regulations.

(2) CONDUCT, CONTROL AND RECORDS

1055. Regulations.

The Secretary of State¹ may make regulations² as to the conduct of residential care homes³, and in particular:

- 86 (1) as to the facilities and services to be provided in such homes⁴;
- 87 (2) as to the numbers and qualifications of staff to be employed in such homes⁵;
- 88 (3) as to the numbers of suitably qualified and competent staff to be on duty in such homes⁶;
- 89 (4) as to the records to be kept and notices to be given in respect of persons received into such homes⁷;
- 90 (5) as to the notification of events occurring in such homes⁸;
- 91 (6) as to the giving of notice by a person of a description specified in the regulations of periods during which any person of a description so specified proposes to be absent from a home⁹;
- 92 (7) as to the information to be supplied in such a notice¹⁰;
- 93 (8) making provision for children under the age of 18 years who are resident in such homes to receive a religious upbringing appropriate to the religious persuasion to which they belong¹¹;
- 94 (9) as to the form of registers to be kept by registration authorities for the purposes of Part I of the Registered Homes Act 1984¹² and the particulars to be contained in them¹³; and
- 95 (10) as to the information to be supplied on an application for registration¹⁴.

Regulations made under these provisions may provide that a contravention of or failure to comply with any specified provision of the regulations is an offence against the regulations¹⁵.

Where there is more than one person registered in respect of a home, anything which is required under the regulations to be done by the person registered in respect of the home, if done by one of the persons so registered, is not be required to be done by any other person registered in respect of the home¹⁶.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 The regulations in force at the date at which this volume states the law are the Residential Care Homes Regulations 1984, SI 1984/1345 (as amended).

3 As to the meaning of 'residential care home' see PARA 1042 ante.

4 Registered Homes Act 1984 s 16(1)(a). See PARA 1056 post.

5 Ibid s 16(1)(b). See PARA 1056 post.

6 Ibid s 16(1)(c). See PARA 1056 post.

7 Ibid s 16(1)(d). See PARA 1061 post.

8 Ibid s 16(1)(e). See PARA 1060 post.

9 Ibid s 16(1)(f). See PARA 1060 post.

10 Ibid s 16(1)(g). See PARA 1060 post.

11 Ibid s 16(1)(h). See PARA 1056 post.

12 Ie ibid Pt I (ss 1-20) (as amended).

13 Ibid s 16(1)(j). See PARA 1046 ante.

14 Ibid s 16(1)(k). See PARA 1045 ante.

15 Ibid s 16(2). A person guilty of an offence under any such regulations is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 49. As to the standard scale see PARA 1014 note 11 ante. As to offences generally see PARA 1054 ante.

16 Residential Care Homes Regulations 1984, SI 1984/1345, reg 22.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1056. Conduct of homes.

1056. Conduct of homes.

The person registered¹ in respect of a residential care home² must arrange for the home to be conducted so as to make proper provision for the welfare, care and, where appropriate, treatment and supervision of all residents³. In reaching any decision relating to a resident the person registered must give first consideration to the need to safeguard and promote the welfare of the resident and must, so far as practicable, ascertain the wishes and feelings of the resident and give due consideration to them as is reasonable having regard to the resident's age and understanding⁴. Every home must be maintained on the basis of good personal and professional relationships between the person registered and persons employed at the home and the residents⁵. The person registered must ensure that corporal punishment is not used as a sanction in relation to any child in the home⁶.

The person registered in respect of a residential care home must:

- 96 (1) having regard to the size of the home and the number, age, sex and condition of residents:

1

1. (a) Employ by day and, where necessary, by night suitably qualified and competent staff in numbers which are adequate for the well-being of residents⁷;
2. (b) provide for each resident such accommodation and space by day and by night as is reasonable⁸;
3. (c) provide adequate and suitable furniture, bedding, curtains, floor covering and, where necessary, equipment and screens in rooms occupied or used by residents⁹;
4. (d) provide for the use of residents a sufficient number of water closets, and of wash-basins, baths and showers fitted with a hot and cold water supply, and any necessary sluicing facilities¹⁰;
5. (e) make such adaptations and provide such facilities as are necessary for residents who are physically handicapped¹¹;
6. (f) provide adequate light, heating and ventilation in all parts of the home occupied or used by residents¹²;
7. (g) keep all parts of the home occupied or used by residents in good structural repair, clean and reasonably decorated¹³;
8. (h) take adequate precautions against the risk of fire, including the provision of adequate means of escape in the event of fire, and make adequate arrangements for detecting, containing and extinguishing fires, for the giving of warnings and the evacuation of all persons in the home in the event of fire and for the maintenance of fire precautions and fire fighting equipment¹⁴;
9. (i) make arrangements to secure by means of fire drills and practices that the staff in the home and, so far as practicable, residents know the procedure to be followed in the case of fire including the procedure for saving life¹⁵;
10. (j) take adequate precautions against the risk of accidents including the training of staff in first aid¹⁶;
11. (k) provide sufficient and suitable kitchen equipment, crockery and cutlery together with adequate facilities for the preparation and storage of food and, so far as may be reasonable and practicable in the circumstances, adequate facilities for residents to prepare their own food and refreshments¹⁷;

12. (l) supply suitable, varied and properly prepared wholesome and nutritious food in adequate quantities for residents¹⁸;
 13. (m) make, after consultation with the local environmental health officer, suitable arrangements for maintaining satisfactory conditions of hygiene in the home¹⁹;
 14. (n) arrange for regular laundering of linen and clothing and, so far as may be reasonable and practicable in the circumstances, provide adequate facilities for residents to do their own laundering²⁰;
 15. (o) make arrangements for any person authorised by the registration authority or by the Secretary of State to interview any resident in private²¹;
 16. (p) make arrangements, where necessary, for residents to receive medical and dental services²²;
 17. (q) make suitable arrangements for the recording, safekeeping, handling and disposal of drugs²³;
 18. (r) make suitable arrangements for the training, occupation and recreation of residents including the provision of play and educational facilities for children²⁴;
 19. (s) provide a place where the valuables of residents may be deposited for safekeeping²⁵;
- 2
- 97 (2) arrange for the home to be connected to a public telephone service and, so far as may be reasonable and practicable in the circumstances, make arrangements for residents to communicate with others in private by post or telephone²⁶;
 - 98 (3) provide suitable facilities for visits to the home by parents, guardians, friends or other visitors of any resident and by any officer of a local authority whose duty it is to supervise the welfare of that resident, but the use of such facilities, times of visiting and other arrangements connected with the visits are to be as the person registered may decide, after consultation with the registration authority²⁷;
 - 99 (4) Ensure that there are facilities in the home whereby residents may, if they so desire, communicate in private with their visitors²⁸;
 - 100 (5) keep affixed in a conspicuous place in the home a notice stating the times during which visits may be made and, at the request of any person wishing to visit a resident, make available to that person details of such times²⁹;
 - 101 (6) Ensure that every resident under the age of 18 years has, so far as practicable in the circumstances, the opportunity to attend such religious services and to receive such instruction as may be appropriate to the religious persuasion to which the resident belongs³⁰.

It may be an offence for the person registered in respect of a residential care home to contravene or fail to comply with the requirements set out in heads (1) to (5) above³¹.

The person registered must inform every resident in writing of the person to whom and the manner in which any request or complaint relating to the home may be made, and must ensure that any complaint so made by a resident or a person acting on his behalf is fully investigated³². The person registered must also inform every resident in writing of the name and address of the registration authority to which complaints in respect of the home may be made by a resident or a person acting on his behalf³³.

1 For the meaning of 'person registered' see PARA 1045 note 26 ante.

2 As to the meaning of 'residential care home' see PARA 1042 ante.

3 Residential Care Homes Regulations 1984, SI 1984/1345, reg 9(1). For the meaning of 'resident' see PARA 1045 note 28 ante.

4 Ibid reg 9(2).

5 Ibid reg 9(3).

6 Ibid reg 9(4) (added by SI 1988/1192). 'Child' means a resident under the age of 18 years and any resident who has attained that age and is the subject of a care order: Residential Care Homes Regulations 1984, SI 1984/1345, reg 1. 'Care order' has the meaning assigned to it in the Children Act 1989 s 105 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 271 et seq); Residential Care Homes Regulations 1984, SI 1984/1345, reg 1 (definition substituted by SI 1991/2502).

7 Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(a).

8 Ibid reg 10(1)(b).

9 Ibid reg 10(1)(c).

10 Ibid reg 10(1)(d).

11 Ibid reg 10(1)(e).

12 Ibid reg 10(1)(f).

13 Ibid reg 10(1)(g).

14 Ibid reg 10(1)(h). In the case of a small home, the person registered is required only to take adequate precautions against the risk of fire: reg 10(1B)(a) (added by SI 1992/2241). For the meaning of 'small home' see PARA 1042 note 8 ante.

15 Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(i). This requirement does not apply to a small home: reg 10(1A) (added by SI 1992/2241).

16 Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(j). In the case of a small home, the person registered is required only to take adequate precautions against the risk of accidents: reg 10(1B)(b) (added by SI 1992/2241).

17 Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(k).

18 Ibid reg 10(1)(l).

19 Ibid reg 10(1)(m). In the case of a small home, consultation with the local environmental health officer is not required: reg 10(1B)(c) (added by SI 1992/2241).

20 Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(n).

21 Ibid reg 10(1)(o). For the meaning of 'registration authority' see PARA 1044 note 3 ante. As to the Secretary of State see PARA 1001 note 6 ante.

22 Ibid reg 10(1)(p). Such arrangements may be made under the National Health Service Act 1977 Pt II (ss 29-56) (as amended) (see HEALTH SERVICES vol 54 (2008) PARAS 241 et seq, 277 et seq), or otherwise: Residential Care Homes Regulations 1984, SI 1984/1345, reg 10(1)(p).

23 Ibid reg 10(1)(q).

24 Ibid reg 10(1)(r).

25 Ibid reg 10(1)(s).

26 Ibid reg 10(2).

27 Ibid reg 11(1). No such consultation with the registration authority is required in respect of a small home: reg 11(1) (amended by SI 1992/2241).

28 Residential Care Homes Regulations 1984, SI 1984/1345, reg 11(2).

29 Ibid reg 11(3). This requirement does not apply to a small home: reg 11(3) (amended by SI 1992/2241).

30 Residential Care Homes Regulations 1984, SI 1984/1345, reg 12.

31 See PARA 1054 ante.

32 Residential Care Homes Regulations 1984, SI 1984/1345, reg 17(1).

33 Ibid reg 17(2).

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1057. Requirements under the Children Act 1989.

1057. Requirements under the Children Act 1989.

Where a child¹ is provided with accommodation in any residential care home² for a consecutive period of at least three months, or with the intention, on the part of the person taking the decision to accommodate him, of accommodating him for such period, the person carrying on the home must notify the local authority³ within whose area the home is carried on⁴. The person carrying on the home must also notify the authority when he ceases to accommodate the child in the home⁵. Failure to comply with these provisions without reasonable excuse is an offence⁶.

A local authority which has been notified under the above provisions must (1) take such steps as are reasonably practicable to enable it to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated in the home; and (2) consider the extent to which (if at all) it should exercise any of its functions under the Children Act 1989 with respect to the child⁷.

A person authorised by a local authority may enter any residential care home within the authority's area for the purpose of establishing whether these provisions have been complied with⁸. The intentional obstruction of another person in the exercise of this power of entry is an offence⁹.

1 'Child' means a person under the age of 18: see the Children Act 1989 s 105(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3.

2 As to the meaning of 'residential care home' see PARA 1042 ante (definition applied by *ibid* s 105(1)).

3 As to the meaning of 'local authority' see PARA 1005 ante.

4 Children Act 1989 s 86(1).

5 *Ibid* s 86(2).

6 *Ibid* s 86(4). A person committing such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 86(8). As to the standard scale see PARA 1014 note 11 ante.

7 *Ibid* s 86(3). As to a local authority's functions under the Children Act 1989 see CHILDREN AND YOUNG PERSONS.

8 *Ibid* s 86(5). If so required, a person exercising such power of entry must produce some duly authenticated document showing his authority to do so: s 86(7).

9 *Ibid* s 86(6). A person committing such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 86(8).

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1058. Visits by person in control of a home.

1058. Visits by person in control of a home.

Where the person in control of a residential care home¹ is not also the manager of the home he must at least once in every month visit the home or arrange for another person to visit the home on his behalf and to report in writing to him on the conduct of the home².

Where the person in control of the home is a company, society, association or other body or firm, the directors or other persons responsible for the management of the body or the partners of the firm must arrange for one or more of their number to visit the home at least once in every month and to report in writing to them on the conduct of the home³.

It may be an offence for the person registered⁴ in respect of a residential care home to contravene or fail to comply with these requirements⁵.

1 As to the meaning of 'residential care home' see PARA 1042 ante.

2 Residential Care Homes Regulations 1984, SI 1984/1345, reg 19(1).

3 Ibid reg 19(2).

4 For the meaning of 'person registered' see PARA 1045 note 26 ante.

5 See PARA 1054 ante.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1059. Inspections of homes.

1059. Inspections of homes.

Any person authorised in that behalf by the Secretary of State¹ may at all times enter and inspect any premises which are used, or which that person has reasonable cause to believe to be used, for the purposes of a residential care home²; and any person authorised in that behalf by a registration authority³ may at all times enter and inspect any premises in the area of the authority which are used, or which that person has reasonable cause to believe to be used, for those purposes⁴. The powers of inspection include power to inspect any records that are required to be kept⁵.

The Secretary of State may by regulations require that residential care homes are to be inspected on such occasions or at such intervals as the regulations may prescribe⁶.

Any person who proposes to exercise any power of entry or inspection⁷ must if so required produce some duly authenticated document showing his authority to exercise the power⁸.

Any person who obstructs the exercise of any such power is guilty of an offence⁹.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 Registered Homes Act 1984 s 17(1). As to the meaning of 'residential care home' see PARA 1042 ante. As to the power of the Secretary of State to inspect and inquire into a residential care home required to be registered under the Registered Homes Act 1984 and used to accommodate children see the Children Act 1989 ss 80, 81 (both as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 156.

3 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

4 Registered Homes Act 1984 s 17(2).

5 *Ie* in accordance with regulations under *ibid* Pt I (ss 1-20) (as amended): s 17(3). As to the keeping of records see PARA 1061 post.

6 *Ibid* s 17(4). The registration authority must ensure that any home other than a small home is inspected not less than twice in every period of 12 months: Residential Care Homes Regulations 1984, SI 1984/1345, reg 18 (substituted by SI 1992/2241). For the meaning of 'small home' see PARA 1042 note 8 ante.

7 *Ie* conferred by the Registered Homes Act 1984 s 17.

8 *Ibid* s 17(5).

9 *Ibid* s 17(6). A person guilty of an offence under this provision is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale: s 51(1). As to the standard scale see PARA 1014 note 11 ante. As to offences generally see PARA 1054 ante.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1060. Notification of events occurring in homes.

1060. Notification of events occurring in homes.

The person registered¹ in respect of a residential care home² must as soon as practicable notify the registration authority³ and the health authority⁴ in whose area the home is situated of the date of arrival of each child in the home and the expected duration of his stay⁵.

The person registered must notify the registration authority not later than 24 hours from the time of its occurrence:

- 102 (1) of the death of any resident under the age of 70 and of the circumstances of his death⁶;
- 103 (2) of the outbreak in the home of any infectious disease which in the opinion of any registered medical practitioner attending persons in the home is sufficiently serious to be so notified, or of any serious injury to or serious illness of any person residing in the home⁷;
- 104 (3) of any unexplained absence of a child from the home⁸;
- 105 (4) of any event in the home which affects the well-being of any resident⁹; and
- 106 (5) of any theft, burglary, fire or accident in the home¹⁰.

Where a child is in the home, the person registered must, not later than 24 hours from the time of the occurrence of any of the events specified in heads (1) to (4) above, also notify the occurrence of that event to certain additional persons¹¹.

The person registered must notify the Secretary of State¹² of the death of any child in the home and of the circumstances of his death not later than 24 hours from the time of its occurrence¹³.

Where the person in control of the home or, as the case may be, the manager of it proposes to be absent from the home for a period of four weeks or more the person in control of the home must give notice in writing to the registration authority of the proposed absence¹⁴ unless it is not proposed to accommodate any resident in the home during the absence of the person in control or, as the case may be, the manager of the home¹⁵. The notice must specify certain matters¹⁶. Except in the case of an emergency, the notice must be given no later than one month before the proposed absence or within such shorter period as may be agreed with the registration authority¹⁷; and where the absence arises as a result of an emergency, the person in control of the home must give notice of the absence within one week of its occurrence¹⁸. The person in control of the home must notify the registration authority in writing of his return or, as the case may be, the return of the manager of the home within one week of that return¹⁹.

The person registered must, before terminating any arrangements for the accommodation of a child, give his parent or guardian or, as the case may be, his care authority reasonable notice of his intention to terminate those arrangements²⁰. Where arrangements for the accommodation of a resident are terminated the person registered must notify the person who appears to him to be the resident's next of kin and, where the resident is under the supervision of an officer of a local social services authority²¹, the person registered must also notify that officer²².

It may be an offence for the person registered in respect of a registered care home to contravene or fail to comply with any of these requirements²³.

- 1 For the meaning of 'person registered' see PARA 1045 note 26 ante.
- 2 As to the meaning of 'residential care home' see PARA 1042 ante.
- 3 For the meaning of 'registration authority' see PARA 1044 note 3 ante.
- 4 As to the abolition of the former district health authorities and the establishment of new health authorities see HEALTH SERVICES.
- 5 Residential Care Homes Regulations 1984, SI 1984/1345, reg 13. For the meaning of 'child' see PARA 1056 note 6 ante.
- 6 Ibid reg 14(1)(a).
- 7 Ibid reg 14(1)(b).
- 8 Ibid reg 14(1)(c).
- 9 Ibid reg 14(1)(d).
- 10 Ibid reg 14(1)(e).
- 11 Ibid reg 14(2). The persons to be notified are: (1) his parent or guardian; (2) if the child is in the care of a care authority not being the registration authority, that authority; (3) if the child is the subject of a care order, his independent visitor (if any); and (4) any person or organisation who or which has accepted responsibility wholly or partly for the cost of that child's maintenance in the home: reg 14(2). 'Care authority', in relation to a child, means the local authority looking after the child within the meaning of the Children Act 1989 s 22(1) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867): Residential Care Homes Regulations 1984, SI 1984/1345, reg 1 (definition substituted by SI 1991/2502). As to the meaning of 'care order' see PARA 1056 note 6 ante. 'Independent visitor' means a person appointed as a visitor pursuant to the Children Act 1989 s 23(9), Sch 2 para 17 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 871): Residential Care Homes Regulations 1984, SI 1984/1345, reg 1 (definition substituted by SI 1991/2502).
- 12 As to the Secretary of State see PARA 1001 note 6 ante.
- 13 Residential Care Homes Regulations 1984, SI 1984/1345, reg 14(3).
- 14 Ibid reg 15(1).
- 15 Ibid reg 15(5).
- 16 Ibid reg 15(2), (3). The matters to be specified are: (1) the length or expected length of the proposed absence; (2) the reason for that absence; (3) the arrangements which have been made for the running of the home during that absence; and (4) the name, address and qualifications of the person who will be responsible for the home during that absence: reg 15(2), (3).
- 17 Ibid reg 15(2).
- 18 Ibid reg 15(3).
- 19 Ibid reg 15(4).
- 20 Ibid reg 16(1).
- 21 'Local social services authority' means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (see PARA 1005 ante): Residential Care Homes Regulations 1984, SI 1984/1345, reg 1.
- 22 Ibid reg 16(2).
- 23 See PARA 1054 ante.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1061. Records.

1061. Records.

The person registered¹ must compile the following records² and must keep them in the home at all times available for inspection by any person authorised in that behalf by the registration authority³ or, as the case may be, the Secretary of State⁴. The records to be kept are:

- 107 (1) a copy of the statement of the aims and objectives of the home, of the care and attention to be provided in the home and of any arrangements for the supervision of residents⁵;
- 108 (2) a daily register of all residents (excluding persons registered or persons employed at the home and their relatives) which register must, where applicable, include in respect of each resident, the following particulars:
 20. (a) the name, address, date of birth and marital status of the resident and whether he is the subject of any court order or other process⁶;
 21. (b) the name, address and telephone number of the resident's next of kin or of any person authorised to act on his behalf⁷;
 22. (c) the name, address and telephone number of the resident's registered medical practitioner⁸ and of any officer of a local social services authority⁹ whose duty it is to supervise the welfare of that person¹⁰;
 23. (d) the date on which the resident entered the home¹¹;
 24. (e) the date on which the resident left the home¹²;
 25. (f) where the resident is transferred to a hospital or nursing home, the date of, and reasons for, the transfer and the name of the hospital or nursing home to which the resident is transferred¹³;
 26. (g) where the resident dies in the home, the date, time and cause of death¹⁴;
 27. (h) where the resident is a child¹⁵ in the care of a care authority¹⁶, the name, address and telephone number of the care authority, of any officer of the authority whose duty it is to supervise the welfare of the child and of the child's independent visitor (if any)¹⁷;
 28. (i) where the resident is an adult who is subject to the guardianship of a local social services authority, the name, address and telephone number of that authority and of any officer of the authority whose duty it is to supervise the welfare of that resident¹⁸;
 29. (j) the name and address of any authority, organisation or other body which arranged the resident's admission to the home¹⁹;
 30. (k) where the resident is a child, the name of any school which he is attending or any other place where he may be receiving education or vocational training²⁰;

- 4
109 (3) in homes accommodating children:

- 5
31. (a) a statement of the sanctions used in the home to control bad behaviour and a book in which must be entered a record of any sanction administered to a child and the name of that child²¹;
32. (b) a register in which must be entered the date on which each child's arrival was notified to the health authority²² in whose area the home is situated and, except where the home is an independent school²³, to the local education authority for that area²⁴;

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- 110 (4) a case record in respect of each resident which must include details of any special needs of that resident, any medical treatment required by him including details of any medicines administered to him, and any other information in relation to him as may be appropriate including details of any periodic review of his welfare, health, conduct and progress; and, in the case of a child who is the subject of a care order²⁵, such details of any review by the care authority as may have been notified by that authority to the person registered²⁶;
- 111 (5) a record in respect of each child who has special educational needs²⁷ and of the special educational provision²⁸ which is being made in relation to him²⁹;
- 112 (6) a record of all medicines kept in the home for a resident and of their disposal when no longer required³⁰;
- 113 (7) a record book in which must be recorded the dates of any visits by persons authorised to inspect the home and the occurrence of certain other events³¹;
- 114 (8) records of the food provided for residents in sufficient detail to enable any person inspecting the record to judge whether the diet is satisfactory and of any special diets prepared for particular residents³²;
- 115 (9) a record of every fire practice, drill or fire alarm test conducted in the home and of any action taken to remedy defects in fire alarm equipment³³;
- 116 (10) a statement of the procedure to be followed in the event of fire³⁴;
- 117 (11) a statement of the procedure to be followed in the event of accidents or in the event of a resident becoming missing³⁵;
- 118 (12) a record of each person employed at the home to provide personal care for residents, which record must include that person's full name, date of birth, qualifications, experience and details of his position and dates of employment at the home and the number of hours for which that person is employed each week³⁶;
- 119 (13) a record of any relatives of the registered person or of persons employed at the home who are residents³⁷;
- 120 (14) a statement of facilities provided in the home for residents and of the arrangements made for visits by their parents, guardians, friends and other visitors³⁸;
- 121 (15) a copy of any report made in accordance with certain provisions³⁹;
- 122 (16) a record of the scale of charges from time to time applicable including any extras for additional services not covered by that scale and of the amounts paid by or in respect of each resident⁴⁰;
- 123 (17) a record of all money or other valuables deposited by a resident for safekeeping or received on the resident's behalf, specifying the date on which such money or valuables were deposited or received and the date on which any sum or other valuable was returned to a resident or used, at the request of the resident, on his behalf and the purpose for which it was used⁴¹;
- 124 (18) in the case of a small home, a record of each person, whether employed or not, at the home who is providing personal care for residents, which record must include that person's full name, date of birth, qualifications, experience and position in the home⁴².

It may be an offence for the person registered in respect of a registered care home to contravene or fail to comply with the requirement to keep records⁴³.

1 For the meaning of 'person registered' see PARA 1045 note 26 ante. As to the compilation of records by a person deemed to be registered under the transitional provisions see the Residential Care Homes Regulations 1984, SI 1984/1345, regs 4, 6(3); and PARA 1042 note 1 ante.

2 le the records specified in *ibid* reg 6(1), Sch 2 (as amended) (see heads (1)-(18) in the text).

3 For the meaning of 'registration authority' see PARA 1044 note 3 ante.

4 Residential Care Homes Regulations 1984, SI 1984/1345, reg 6(1). As to the Secretary of State see PARA 1001 note 6 ante.

Every record compiled in accordance with reg 6 (as amended) must be retained for a minimum of three years from the date of the last entry in it: reg 6(4).

5 Ibid Sch 2 para 1. The statement referred to is that which has been supplied to the registration authority and has been agreed with that authority (see PARA 1045 head (j) ante). For the meaning of 'resident' see PARA 1045 note 28 ante.

6 Ibid Sch 2 para 2(a).

7 Ibid Sch 2 para 2(b).

8 As to registered medical practitioners see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 4.

9 As to the meaning of 'local social services authority' see PARA 1060 note 21 ante.

10 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 2(c).

11 Ibid Sch 2 para 2(d).

12 Ibid Sch 2 para 2(e).

13 Ibid Sch 2 para 2(f).

14 Ibid Sch 2 para 2(g).

15 For the meaning of 'child' see PARA 1056 note 6 ante.

16 For the meaning of 'care authority' see PARA 1060 note 11 ante.

17 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 2(h). For the meaning of 'independent visitor' see PARA 1060 note 11 ante.

18 Ibid Sch 2 para 2(i).

19 Ibid Sch 2 para 2(j).

20 Ibid Sch 2 para 2(k).

21 Ibid Sch 2 para 3(a).

22 As to the abolition of the former district health authorities and the establishment of new health authorities see HEALTH SERVICES.

23 Ie within the meaning of the Education Act 1996: see EDUCATION.

24 See the Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 3(b); and the Interpretation Act 1978 s 17(2)(a). As to local education authorities see the Education Act 1996 ss 12, 579(1); and EDUCATION vol 15(1) (2006 Reissue) PARA 20.

25 For the meaning of 'care order' see PARA 1056 note 6 ante.

26 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 4. The person registered must keep the case record of each resident compiled in accordance with this provision in a safe place in the home: reg 6(2). In the case of a small home, the person registered need not compile the records specified in this provision, except to the extent that it relates to any medicines administered to a resident: reg 6(1A)(b) (added by SI 1992/2241). For the meaning of 'small home' see PARA 1042 note 8 ante.

27 Ie within the meaning of the Education Act 1996 s 312 (see EDUCATION vol 15(2) (2006 Reissue) PARA 984).

28 Ie within the meaning of ibid s 312 (see EDUCATION vol 15(2) (2006 Reissue) PARA 984).

29 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 5; Interpretation Act 1978 s 17(2)(a). The person registered must keep in a safe place in the home the case record of each resident compiled in accordance with this provision: Residential Care Homes Regulations 1984, SI 1984/1345, reg 6(2).

30 Ibid Sch 2 para 6.

31 Ie the events specified in PARA 1060 heads (1)-(5) ante: ibid Sch 2 para 7. As to inspections see PARA 1059 ante. A person registered in respect of a small home need not compile the records specified in this provision to the extent that it relates to any visits by persons authorised to inspect the home: reg 6(1A)(c) (added by SI 1992/2241).

32 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 8. A person registered in respect of a small home need not compile the records specified in Sch 2 paras 8-16: reg 6(1A)(a) (added by SI 1992/2241).

33 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 9. See note 32 supra.

34 Ibid Sch 2 para 10. See note 32 supra.

35 Ibid Sch 2 para 11. See note 32 supra.

36 Ibid Sch 2 para 12. See note 32 supra.

37 Ibid Sch 2 para 13. See note 32 supra.

38 Ibid Sch 2 para 14. See note 32 supra.

39 Ie the provisions of ibid reg 19(2) (see PARA 1058 ante): Sch 2 para 15. See note 32 supra.

40 Ibid Sch 2 para 16. See note 32 supra.

41 Ibid Sch 2 para 17 (amended by SI 1988/1192).

42 Residential Care Homes Regulations 1984, SI 1984/1345, Sch 2 para 18 (added by SI 1992/2241).

43 See PARA 1054 ante.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/4. RESIDENTIAL CARE HOMES/(2) CONDUCT, CONTROL AND RECORDS/1062. Registered homes tribunals.

1062. Registered homes tribunals.

For the purpose of enabling a tribunal to hear an appeal¹ to be constituted as occasion may require there is (1) a panel appointed by the Lord Chancellor ('the legal panel')² of persons available to act as chairmen of any such tribunals; and (2) a panel appointed by the Lord President of the Council ('the panel of experts')³ of persons available to act as members⁴. Such tribunals⁵ are known as registered homes tribunals⁶.

No officer of a government department may be appointed to either panel⁷. A person appointed to a panel holds office subject to such conditions as to the period of his membership and otherwise as may be determined by the person appointing him⁸. No appointment of a person to a legal panel may be such as to extend beyond the day on which he attains the age of 70 years⁹.

A registered homes tribunal consists of a chairman and two other members¹⁰. The chairman must be a member of the legal panel appointed to the tribunal by the Lord Chancellor¹¹. The other two members must be members of the panel of experts appointed to the tribunal by the Lord President of the Council¹².

A tribunal which is constituted to hear both an appeal relating to registration under Part I of the Registered Homes Act 1984 and an appeal relating to registration under Part II of that Act¹³ must include a registered midwife, if the appeal relates to registration of a maternity home, and, in any other case, a qualified nurse¹⁴.

The Secretary of State may by statutory instrument make rules as to the practice and procedure to be followed with respect to the constitution of registered homes tribunals, and as to proceedings before such tribunals and matters incidental to or consequential on such proceedings¹⁵.

An appellant¹⁶ must state in the notice of appeal¹⁷ to a registration authority¹⁸ an address at which any notice, order or other document may be served upon him¹⁹. Where the registration authority is not the Secretary of State, the authority must on receipt of the notice of appeal send it to the Secretary of State within seven days²⁰.

The Secretary of State must on receipt of the notice of appeal request the Lord Chancellor and the Lord President of the Council respectively to appoint the chairman and members of the tribunal; and the Secretary of State must appoint a person to act as secretary of the tribunal for the purposes of the appeal²¹.

The chairman of the tribunal must, so far as practicable within 28 days of his appointment, fix a date, time and place for the hearing of the appeal; and he must serve notice²² upon the appellant not less than 42 days before the date so fixed and at the same time send a copy of the notice to the registration authority²³.

Where the appeal is against a decision of the registration authority, the authority must not less than 30 days before the date fixed for the hearing of the appeal send to the secretary of the tribunal four copies of a statement of the reasons for the decision, and the authority must at the same time serve a copy of the statement upon the appellant²⁴. Where the appeal is against an order made by a justice of the peace²⁵, the registration authority must not less than 30 days before the date fixed for the hearing send to the secretary of the tribunal four copies of the statement which supported the authority's application for the order²⁶.

The appellant must not less than 21 days before the date fixed for the hearing send to the secretary of the tribunal four copies of a statement, signed by or on behalf of the appellant, on the grounds of the appeal, and must at the same time send a copy of the statement to the registration authority²⁷.

The appellant may appear before the tribunal in person or he may be represented by counsel or a solicitor or by any other person authorised by him to act on his behalf²⁸. The registration authority may be represented before the tribunal by an officer or servant of the authority or by counsel or a solicitor²⁹.

The tribunal must sit in public unless for any reason the tribunal determines that the hearing or any part of it is to be in private³⁰. A member of the Council on Tribunals may be present in his capacity as such at a hearing before a tribunal notwithstanding that the hearing is not in public and he may remain present during the deliberations of the tribunal but must take no part in those deliberations³¹.

The tribunal may at any time, whether before or after the beginning of the hearing, adjourn the hearing and when so doing may either fix the date, time and place at which the hearing is to be resumed or leave the date, time and place to be determined later by the tribunal; but the tribunal must not be resumed at that date, time or place unless the tribunal is satisfied that the appellant and the registration authority have been given at least 14 days notice thereof³². If either the appellant or the registration authority fails to appear or be represented at the time fixed for the hearing of the appeal, the tribunal may take such action whether by proceeding with or adjourning the hearing or otherwise as may appear to the tribunal to be just and expedient³³.

The appellant and the registration authority have the right to address the tribunal, to give evidence and to call witnesses and to examine or cross-examine any person giving evidence before the tribunal³⁴. The chairman of the tribunal may require the attendance of further witnesses in addition to those called by or on behalf of the appellant and the registration authority³⁵. The chairman of the tribunal may permit evidence to be given by affidavit but may at any stage of the proceedings require the personal attendance of any deponent for examination and cross-examination³⁶. The appellant, the registration authority or any witness may produce in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law and the tribunal may receive in evidence such document or information if the chairman of the tribunal is satisfied that it is desirable in the interests of justice to receive it³⁷. The chairman of the tribunal may before or after the beginning of the hearing call for such further information or reports as he thinks desirable, and may give directions as to the manner in which and the persons by whom such material is to be furnished³⁸.

The decision of the tribunal on any appeal is the decision of the majority³⁹. The chairman of the tribunal must, as soon as possible after the hearing, notify the appellant and registration authority in writing of the decision and the reasons for the decision⁴⁰. Where the appeal was against an order made by a justice of the peace, the chairman of the tribunal must also notify him in writing of the decision and the reasons for the decision⁴¹.

An appellant may at any time give notice in writing to the secretary of the tribunal that he desires to withdraw his appeal and thereupon the appeal is deemed to be dismissed⁴².

A tribunal may, with the consent of the appellant and the chairman of the tribunal, hear two or more appeals in respect of the same home together⁴³. A tribunal may also hear two or more appeals in respect of different homes together where the appellant in respect of each of the appeals is the same, and both the appellant and the chairman of the tribunal consent to the appeals being heard together⁴⁴. For the purpose of enabling two or more appeals to be heard together, the tribunal may adjourn the proceedings in relation to any appeal⁴⁵.

The time appointed by these rules for the doing of any act may be extended by the chairman of the tribunal upon such terms (if any) as may seem just notwithstanding that the time appointed has expired before an application for extension is made⁴⁶.

Appeal from the tribunal lies to the High Court, but only on a point of law⁴⁷.

1 le under the Registered Homes Act 1984 Pt I (ss 1-20) (as amended) (see PARA 1042 et seq ante); Pt II (ss 21-38) (as amended); and the Children Act 1989 (see CHILDREN AND YOUNG PERSONS): Registered Homes Act 1984 s 39 (amended by the Children Act 1989 s 108(5), Sch 13 para 49(2)).

2 No person is qualified to be appointed to the legal panel unless he possesses such legal qualifications as the Lord Chancellor considers suitable: Registered Homes Act 1984 s 40(3).

3 No person is qualified to be appointed to the panel of experts unless he has had experience in social work, medicine, nursing or midwifery or such other experience as the Lord President of the Council considers suitable: *ibid* s 40(4).

4 *Ibid* s 40(1).

5 le tribunals constituted under *ibid* Pt III (ss 39-45) (as amended): see s 40(2).

6 *Ibid* s 40(2).

7 *Ibid* s 40(5).

8 *Ibid* s 40(6).

9 *Ibid* s 40(7) (added by the Judicial Pensions and Retirement Act 1993 s 26(10), Sch 6 para 55). This provision is, however, subject to the power in the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 485, 902) to authorise continuance in office up to the age of 75 years: Registered Homes Act 1984 s 40(7) (as so added).

10 *Ibid* s 41(1). The Secretary of State may assign such staff as may from time to time be required for registered homes tribunals: s 44. The Secretary of State may pay to members of registered homes tribunals such fees and allowances as he may, with the consent of the Treasury, determine; and defray the expenses of such tribunals up to such amount as he may with the like consent determine: s 45. As to the Secretary of State see PARA 1001 note 6 ante.

Any expenses incurred by the Secretary of State for the purposes of registered homes tribunals must be defrayed out of money provided by Parliament: see the Health and Social Services and Social Security Adjudications Act 1983 s 28(1).

11 Registered Homes Act 1984 s 41(2).

12 *Ibid* s 41(3).

13 A registered homes tribunal to hear an appeal relating solely to registration under *ibid* Pt II (as amended) must also include a medical practitioner: s 41(1).

14 *Ibid* s 41(2), (3). 'Qualified nurse' means a person who is for the time being registered under the Nurses, Midwives and Health Visitors Act 1979, and would have been qualified to be registered under the Nurses Act 1957 s 2(1) (repealed): Registered Homes Act 1984 s 41(4). As to the registration of nurses and midwives see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 716 et seq.

15 *Ibid* s 43(1). Rules so made are subject to annulment in pursuance of a resolution of either House of Parliament: s 43(2). Without prejudice to the generality of this provision, such rules may make provision (1) requiring particulars to be supplied of matters relevant to the determination of an appeal; (2) enabling two or more appeals to be heard together; and (3) as to representation before a tribunal, by counsel or a solicitor or otherwise: s 43(1). In exercise of this power the Secretary of State has made the Registered Homes Tribunals Rules 1984, SI 1984/1346.

The Arbitration Act 1996 Pt I (ss 1-84) does not apply to any proceedings before registered homes tribunals except so far as any provision of that Act may be applied to such tribunals with or without modifications by rules made under the Registered Homes Act 1984 s 43 (as amended): s 43(3) (amended by the Arbitration Act 1996 s 107(1), Sch 3 para 41).

Subject to the provisions of the Registered Homes Act 1984 Pt III (as amended) and the Registered Homes Tribunals Rules 1984, SI 1984/1346, the tribunal may regulate its own procedure: r 15.

16 'Appellant' means a person who is entitled to appeal under any of the relevant enactments (see note 1 supra) or being so entitled has appealed to a tribunal: *ibid* r 2.

17 See PARA 1051 ante.

18 For the meaning of 'registration authority' in relation to a home under the Registered Homes Act 1984 Pt I (as amended) see PARA 1044 note 3 ante (definition applied by the Registered Homes Tribunals Rules 1984, SI 1984/1346, r 2).

19 *Ibid* r 3(1).

20 *Ibid* r 3(2).

21 *Ibid* r 4.

22 As to the form of the notice see *ibid* r 5(1), Schedule.

23 *Ibid* r 5(1).

24 *Ibid* r 5(2). As to amendment of a statement see *R v Registered Homes Tribunal, ex p Hertfordshire County Council* (1996) 95 LGR 76.

25 See PARA 1050 ante.

26 Registered Homes Tribunals Rules 1984, SI 1984/1346, r 5(3).

27 *Ibid* r 5(4).

28 *Ibid* r 6(1).

29 *Ibid* r 6(2).

30 *Ibid* r 7(1).

31 *Ibid* r 7(2). As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq.

32 *Ibid* r 8(1).

33 *Ibid* r 8(2).

34 *Ibid* r 9(1). Where a local authority seeks to maintain a justice's order to cancel registration, the burden of proof is on the local authority to prove the allegations on the balance of probabilities: *Lyons v East Sussex County Council* (1987) Times, 27 July; on appeal (1987) 86 LGR 369, CA. If the tribunal comes to the conclusion that the material before it did not justify the making of the order for cancellation of registration, it must allow the appeal, notwithstanding that there was evidence that the proprietor was not a fit and proper person to be carrying on a residential home: *Lyons v East Sussex County Council* (1987) 86 LGR 369, CA.

35 Registered Homes Tribunals Rules 1984, SI 1984/1346, r 9(2). The provisions of the Arbitration Act 1950 (repealed: see now the Arbitration Act 1996; and ARBITRATION vol 2 (2008) PARA 1201 et seq) relating to administration of oaths, summoning of witnesses etc apply to proceedings before the tribunal and the chairman of the tribunal has the same powers under those provisions as if he were an arbitrator or a party to a reference under an arbitration agreement: Registered Homes Tribunals Rules 1984, SI 1984/1346, r 10(1).

36 *Ibid* r 9(3).

37 *Ibid* r 10(2).

38 *Ibid* r 10(3).

39 *Ibid* r 11(1).

40 *Ibid* r 11(2).

41 *Ibid* r 11(3).

42 *Ibid* r 12.

43 Ibid r 13(1).

44 Ibid r 13(2).

45 Ibid r 13(3).

46 Ibid r 14.

47 Tribunals and Inquiries Act 1992 s 11(1) (as amended); Sch 1; and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

UPDATE

1055-1062 Conduct, Control and Records

The Registered Homes Act 1984 is repealed by the Care Standards Act 2000 Sch 6. For new provision as to standards see ss 22, 23; and PARA 1042B.

1062 Registered homes tribunals

NOTE 47--Tribunals and Inquiries Act 1992 s 11(1) amended: Sea Fish (Conservation) Act 1992 s 9; Education Act 1993 s 181(2); SI 2001/3649, SI 2002/2217, SI 2008/2833, SI 2009/1307.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1063. Interpretation.

5. CHRONICALLY SICK AND DISABLED PERSONS

1063. Interpretation.

Where it appears to the Secretary of State¹ to be necessary or expedient to do so for the proper operation of any provision of the Chronically Sick and Disabled Persons Act 1970², he may make regulations³ as to the interpretation for the purposes of that provision of the expressions 'chronically sick', 'chronic illness', 'disabled' and 'disability'⁴.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 See PARAS 1023 ante, 1064 et seq post.

3 The regulations must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Chronically Sick and Disabled Persons Act 1970 s 28 (as amended: see note 4 infra).

4 Ibid s 28 (prospectively amended by the Disabled Persons Act 1981 s 6(5)). At the date at which this volume states the law, no such regulations had been made. As to the meaning of 'disability' in the National Assistance Act 1948 see PARA 1020 note 10 ante. The Disabled Persons Act 1981 s 6 extends to England and Wales only: s 6(7).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1063 Interpretation

NOTE 4--1981 Act s 6 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1064. Representation on advisory committees.

1064. Representation on advisory committees.

Provision is made for the representation of disabled persons on a wide variety of advisory committees.

The Secretary of State¹ must ensure that the war pensions central advisory committee includes at least one war disabled pensioner².

In the appointment of persons³ to advise the Secretary of State with respect to the performance of certain functions relating to employment, employment training and careers service provision, regard must be had to the desirability of including one or more persons with experience of work among, and the special needs of, young disabled persons and to the person or persons with that experience being or including a disabled person or persons⁴.

The Industrial Injuries Advisory Council⁵ must include at least one person with experience of work among and of the needs of the chronically sick and disabled, and in selecting any such person regard must be had to the desirability of having a chronically sick or disabled person⁶.

Where a local authority⁷ appoints a statutory committee the members of which include or may include persons who are not members of the authority, and the committee is concerned with matters in which the chronically sick or disabled have special needs, regard must be had to the desirability of appointing to the committee persons with experience of work among, and of the needs of, the chronically sick and disabled, and to the person or persons with that experience being or including a chronically sick or disabled person or persons⁸.

In appointing persons to be members of any of certain advisory committees or councils⁹, regard must similarly be had to the desirability of the committee or council in question including one or more persons with experience of work among, and the special needs of, disabled persons, and to the person or persons with that experience being or including a disabled person or persons¹⁰.

Any appointment or co-option to any council, committee or body, pursuant to any enactment, of one or more persons with special knowledge of the needs of disabled persons may only be made after consultation with such organisation or organisations of disabled people as may be appropriate¹¹.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 See the Chronically Sick and Disabled Persons Act 1970 s 9(1); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 621. As to war pensions and war pensions committees see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 595 et seq.

3 Ie pursuant to the Employment and Training Act 1973 s 5(2)(a) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 563).

4 See the Chronically Sick and Disabled Persons Act 1970 s 13(2) (amended by the Employment and Training Act 1973 s 14, Sch 3 para 11, Sch 4; and the Trade Union Reform and Employment Rights Act 1993 s 49(2), Sch 8 para 3); and see EMPLOYMENT vol 40 (2009) PARA 563.

5 As to the Industrial Injuries Advisory Council see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 408.

6 Chronically Sick and Disabled Persons Act 1970 s 12. As to the meaning of 'chronically sick' see PARA 1063 ante.

7 le within the meaning of the Local Government Act 1933 (repealed: see now the Local Government Act 1972; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq).

8 Chronically Sick and Disabled Persons Act 1970 s 15.

9 le relating to gas and electricity consumers, post office users and transport users: see *ibid* s 14 (as amended); and FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 716 et seq; POST OFFICE; LONDON GOVERNMENT vol 29(1) (Reissue) PARA 322 et seq.

10 *Ibid* s 14(1) (amended by the London Regional Transport Act 1984 s 40(12), Sch 3 para 12; the Gas Act 1986 s 67(1), Sch 7 para 11; the Electricity Act 1989 s 2(6), Sch 2 para 9; the Railways Act 1993 s 2(8), Sch 2 para 9; and the Coal Industry Act 1994 s 67(8), Sch 11 Pt III).

11 Disabled Persons (Services, Consultation and Representation) Act 1986 s 10.

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1064 Representation of advisory committees

NOTE 4--1973 Act Sch 3 para 11 repealed in part: Statute Law (Repeals) Act 2004.

NOTES 9, 10--Changes are made to the advisory committees and councils relating to the gas and electricity industries: Chronically Sick and Disabled Persons Act 1970 s 14(1) (amended by the Utilities Act 2000 Sch 8).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1065. Separation of younger patients from older patients.

1065. Separation of younger patients from older patients.

The Secretary of State¹ must use his best endeavours to secure that, so far as practicable, in any hospital for which he is responsible, a person who is suffering from a condition of chronic illness or disability² and satisfies certain criteria³ is not cared for in the hospital as an in-patient in any part of the hospital which is normally used wholly or mainly for the care of elderly persons⁴ unless he is himself an elderly person⁵.

Each year the Secretary of State must lay information before each House of Parliament as to any such chronically sick and disabled persons who are not elderly, but are cared for in a part of a hospital which is normally used wholly or mainly for the care of elderly persons⁶.

1 The functions of the Secretary of State under the Chronically Sick and Disabled Persons Act 1970 s 17 (as amended) are delegated to health authorities under the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708. As to the Secretary of State see PARA 1001 note 6 ante.

2 As to the meaning of 'chronic illness' and 'disability' see PARA 1063 ante.

3 The criteria which a person suffering from a condition of chronic illness or disability must satisfy are (1) that he is in hospital for the purpose of long-term care for that condition; or (2) that he normally resides elsewhere but is being cared for in the hospital because that condition is such as to preclude him from residing elsewhere without the assistance of some other person, and such assistance is for the time being not available: Chronically Sick and Disabled Persons Act 1970 s 17(1)(a), (b).

4 'Elderly person' means a person who is aged 65 or more or is suffering from the effects of premature ageing: *ibid* s 17(3).

5 *Ibid* s 17(1) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 132).

6 Chronically Sick and Disabled Persons Act 1970 s 17(2) (substituted by the National Health Service Reorganisation Act 1973 Sch 4 para 132). See also PARA 1017 ante.

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1065 Separation of younger patients from older patients

NOTE 1--SI 1996/708 amended, in relation to England, by SI 2001/747, and revoked, in relation to Wales, by SI 2009/1511. See National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375 (amended by SI 2002/2548, SI 2003/1497, SI 2004/1031, SI 2006/359, SI 2006/562, SI 2006/635, SI 2006/1407, SI 2007/559, SI 2007/1818, SI 2008/224, SI 2008/2677, SI 2008/3166, SI 2009/112).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1066. Provision for the disabled in educational and work premises.

1066. Provision for the disabled in educational and work premises.

Any person undertaking the provision of certain buildings or premises must, in the means of access both to and within the buildings or premises and in the parking facilities and sanitary conveniences to be available (if any), make provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of persons using the buildings or premises who are disabled¹. The buildings and premises referred to are:

- 125 (1) buildings intended for the purposes of (a) universities, university colleges and colleges, schools and halls of universities²; (b) certain other institutions within the higher education sector³; (c) schools and institutions which provide higher education or further education (or both) and are maintained or assisted by local education authorities⁴; and (d) certain other institutions within the further education sector⁵;
- 126 (2) office premises, shop premises and railway premises⁶ and premises which are deemed⁷ to be such premises⁸, being in each case premises in which persons are employed to work⁹;
- 127 (3) factories¹⁰ in which persons are employed to work¹¹.

¹ Chronically Sick and Disabled Persons Act 1970 s 8(1), s 8A(1) (s 8A added by the Chronically Sick and Disabled Persons (Amendment) Act 1976 s 2). As to the meaning of 'disabled' see PARA 1063 ante.

The Chronically Sick and Disabled Persons Act 1970 s 8(1), s 8A(1) (as so added) are prospectively amended by the Disabled Persons Act 1981 s 6(1) from a date to be appointed under s 6(6). The requirement is then to be for appropriate provision to be made for the needs of persons using the buildings or premises who are disabled: s 6(1)(a). However, the provision need not be made if such body as may be prescribed by the Secretary of State is satisfied, after carrying out any procedures which may be so prescribed, that in the circumstances such provision is either not practicable or not reasonable: see s 6(1)(b). As to the Secretary of State see PARA 1001 note 6 ante.

Further, as from the date so appointed, in respect of educational establishments falling within the Chronically Sick and Disabled Persons Act 1970 s 8 (as amended) 'appropriate provision' in relation to any case means provision conforming with so much of the design note as is relevant to that case; 'prescribed' means prescribed by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and 'the design note' means Design Note 18 'Access for the Physically Disabled to Educational Buildings', published on behalf of the Secretary of State: Chronically Sick and Disabled Persons Act 1970 s 8(1A) (prospectively added by the Disabled Persons Act 1981 s 6(4)). From the date so appointed the Secretary of State may make regulations amending the definition of 'the Design Note': see the Chronically Sick and Disabled Persons Act 1970 s 28(b)(ii) (prospectively added by the Disabled Persons Act 1981 s 6(5)).

As from the date so appointed, the Chronically Sick and Disabled Persons Act 1970 s 4(1A) (as prospectively added) applies in relation to the interpretation of s 8A(1) (as prospectively amended) as it applies in relation to the interpretation of s 4(1) (as prospectively amended) (see PARA 1067 note 3 post): Chronically Sick and Disabled Persons Act 1970 s 8A(1A) (prospectively added by the Disabled Persons Act 1981 s 6(3)).

At the date at which this volume states the law, no such date had been appointed, and accordingly none of these prospective amendments are in force.

² Chronically Sick and Disabled Persons Act 1970 s 8(2)(a).

³ I.e. those within the meaning of the Further and Higher Education Act 1992 s 91(5): Chronically Sick and Disabled Persons Act 1970 s 8(2)(aa) (added by the Education Reform Act 1988 s 237, Sch 12 Pt III para 69; and substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt II para 72). As to further and higher education see EDUCATION vol 15(2) (2006 Reissue) PARA 579 et seq.

4 Chronically Sick and Disabled Persons Act 1970 s 8(2)(b) (substituted by the Education Reform Act 1988 Sch 12 Pt III para 69). Expressions used in the Chronically Sick and Disabled Persons Act 1970 s 8(2)(b) (as so substituted) and in the Education Act 1996 have the same meanings as in that Act (see EDUCATION): Chronically Sick and Disabled Persons Act 1970 s 8(2) (substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 19).

5 le those within the meaning of the Further and Higher Education Act 1992 s 91(3): Chronically Sick and Disabled Persons Act 1972 s 8(2)(ba) (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 72). See note 3 supra.

6 le premises to which the Offices, Shops and Railway Premises Act 1963 applies (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 327 et seq): Chronically Sick and Disabled Persons Act 1970 s 8A(2)(a) (as added: see note 1 supra).

7 le for the purposes of the Offices, Shops and Railway Premises Act 1963 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 326 et seq).

8 Chronically Sick and Disabled Persons Act 1970 s 8A(2)(b) (as added: see note 1 supra).

9 Ibid s 8A(2) (as added: see note 1 supra).

10 le as defined by the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318 et seq): Chronically Sick and Disabled Persons Act 1970 s 8A(2)(c) (as added: see note 1 supra).

11 Ibid s 8A(2) (as added: see note 1 supra).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1066 Provision for the disabled in educational and work premises

NOTE 1--1981 Act s 6 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1067. Provision for the disabled in premises open to the public.

1067. Provision for the disabled in premises open to the public.

Any person undertaking the provision of any building or premises to which the public are to be admitted¹, whether on payment or otherwise, must, in the means of access both to and within the building or premises and in the parking facilities² and sanitary conveniences to be available (if any), make provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the building or premises who are disabled³.

Where any local authority⁴ undertakes the provision of a public sanitary convenience, it is the duty of the authority, in doing so, to make provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of disabled persons⁵. Any local authority which in any public sanitary convenience provided by it makes or has made provision for the needs of disabled persons must take such steps as may be reasonable, by sign-posts or similar notices, to indicate the whereabouts of the convenience⁶.

Any person upon whom a notice⁷ is served requiring the provision and maintenance of sanitary conveniences for the use of persons frequenting certain premises must in complying with the notice make provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of persons frequenting those premises who are disabled⁸.

Where any provision for disabled persons is made at a building or premises in compliance with certain requirements⁹, a notice or sign indicating that provision is made for the disabled must be displayed outside the building or premises or so as to be visible from outside the building or premises¹⁰, and notices or signs must be displayed in the building or on the premises indicating the places where such provision is made and appropriate routes for persons who are disabled to get to those places¹¹.

1 This provision does not apply to any building or premises intended for purposes mentioned in the Chronically Sick and Disabled Persons Act 1970 s 8(2) or s 8A(2) (see PARA 1066 heads (1)-(3) ante): s 4(2) (amended by the Chronically Sick and Disabled Persons (Amendment) Act 1976 s 1).

2 Where parking facilities for persons who are disabled are provided under the Chronically Sick and Disabled Persons Act 1970 s 4 (as amended), notices or signs must be displayed indicating an appropriate route for such persons to get from the place where the parking facilities are provided to the building or premises in connection with which they are provided: s 7(3) (s 7 substituted by the Disabled Persons Act 1981 s 5). As to the meaning of 'disabled' see PARA 1063 ante.

3 Chronically Sick and Disabled Persons Act 1970 s 4(1).

Sections 4(1), 5(1), 6(1) (as amended) are prospectively amended by the Disabled Persons Act 1981 s 6(1) from a date to be appointed under s 6(6). The requirement is then to be for appropriate provision to be made for the needs of persons using the buildings or premises who are disabled: s 6(1)(a). However, the provision need not be made if such body as may be prescribed by the Secretary of State is satisfied, after carrying out any procedures which may be so prescribed, that in the circumstances such provision is either not practicable or not reasonable: see s 6(1)(b). As to the Secretary of State see PARA 1001 note 6 ante.

As from the date so appointed, 'appropriate provision', in relation to any case, means provision conforming with so much of the Code of Practice for Access for the Disabled to Buildings as is relevant to that case; 'prescribed' means prescribed by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and 'the Code of Practice for Access for the Disabled to Buildings' means the British Standards Institution code of practice referred to as BS5810:1979: Chronically Sick and Disabled Persons Act 1970 s 4(1A) (prospectively added by the Disabled Persons Act 1981 s 6(2)). From the date so appointed the Secretary of State may make regulations amending the definition of 'the Code of Practice for Access for the Disabled to Buildings': see the Chronically Sick and Disabled Persons Act 1970 s 28(b)(i) (prospectively added by the Disabled Persons Act 1981 s 6(5)).

As from the date so appointed, the Chronically Sick and Disabled Persons Act 1970 s 4(1A) (as so added) applies in relation to the interpretation of s 5(1) (as prospectively amended) and s 6(1) (as amended and prospectively amended) as it applies in relation to the interpretation of s 4(1) (as prospectively amended): Chronically Sick and Disabled Persons Act 1970 ss 5(1A), 6(1A) (both prospectively added by the Disabled Persons Act 1981 s 6(3)).

At the date at which this volume states the law, no such date had been appointed; and accordingly none of these prospective amendments are in force.

4 'Local authority' means a local authority within the meaning of the Local Government Act 1933 (repealed: see now the Local Government Act 1972; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq) and any joint board or joint committee of which all the constituent authorities are local authorities within the meaning of that Act: Chronically Sick and Disabled Persons Act 1970 s 5(3).

5 Ibid s 5(1). As to the prospective amendment of this provision see note 3 supra.

6 Ibid s 5(2).

7 Ie under the Local Government (Miscellaneous Provisions) Act 1976 s 20 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 990).

8 Chronically Sick and Disabled Persons Act 1970 s 6(1) (amended by Local Government (Miscellaneous Provisions) Act 1976 ss 20(10), 81(1), Sch 2). As to the prospective amendment of this provision see note 3 supra.

9 Ie any provision required by the Chronically Sick and Disabled Persons Act 1970 ss 4, 5, 6 (as amended); s 8 (as amended); or s 8A (as added) (see the text and notes 1-8 supra; and PARA 1066 ante): see s 7(1) (as substituted: see note 2 supra).

10 Ibid s 7(1)(a) (as substituted: see note 2 supra). This provision applies to a sanitary convenience provided elsewhere than in a building, and not itself being a building, as it applies to a building: s 7(2) (as substituted: see note 2 supra).

11 Ibid s 7(1)(b) (as substituted: see note 2 supra).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1067 Provision for the disabled in premises open to the public

NOTE 3--1981 Act s 6 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1068. Report on improvement of means of access.

1068. Report on improvement of means of access.

The Secretary of State¹ must lay before Parliament a report on his proposals for ensuring or facilitating the improvement of means of access for disabled² persons to certain buildings or premises³, to public sanitary conveniences⁴, and to sanitary conveniences provided in any of certain places⁵.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 As to the meaning of 'disabled' see PARA 1063 ante.

3 The such buildings or premises as are mentioned in the Chronically Sick and Disabled Persons Act 1970 ss 4, 8 (as amended) or s 8A (as added) (see PARAS 1066, 1067 notes 1-3 ante): s 8B(1)(a) (s 8B added by the Disabled Persons Act 1981 s 7).

4 Chronically Sick and Disabled Persons Act 1970 s 8B(1)(b) (as added: see note 3 supra).

5 Ibid s 8B(1)(c) (as added: see note 3 supra). The places referred to are (1) a place which is normally used or is proposed to be normally used for any of the following purposes, namely (a) the holding of any entertainment, exhibition or sporting event to which members of the public are admitted either as spectators or otherwise, and (b) the sale of food or drink to members of the public for consumption at the place; (2) a place which is used on some occasion or occasions or is proposed to be used on some occasion or occasions for any of those purposes; and (3) a betting office: s 8B(2) (as so added).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1068 Report on improvement of means of access

NOTE 5--Head (3) omitted: Chronically Sick and Disabled Persons Act 1970 s 8B(2) (amended by the Gambling Act 2005 Sch 16 para 4, Sch 17).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1069. Housing.

1069. Housing.

In discharging its duty¹ to consider housing conditions in its district and the needs of its district with respect to the provision of further housing accommodation², a local housing authority³ must have regard to the special needs of chronically sick or disabled persons⁴.

1 le the duty under the Housing Act 1985 s 8 (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 220).

2 As to the meaning of 'housing accommodation' see *ibid* s 56; and HOUSING vol 22 (2006 Reissue) PARA 11.

3 As to the meaning of 'local housing authority' see *ibid* s 1 (as amended); and HOUSING vol 22 (2006 Reissue) PARA 9. As to the meaning of 'local authority' see PARA 1005 *ante*.

4 Chronically Sick and Disabled Persons Act 1970 s 3(1) (substituted by the Housing (Consequential Provisions) Act 1985 s 4(1), Sch 2 para 20). See also HOUSING vol 22 (2006 Reissue) PARA 220. As to the meaning of 'chronically sick' and 'disabled' see PARA 1063 *ante*.

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1070. Use of invalid carriages on highways.

1070. Use of invalid carriages on highways.

An invalid carriage¹ which complies with prescribed requirements² and which is being used in accordance with prescribed conditions³ is not prohibited or restricted from being used on a footway⁴ by any statutory provision⁵ prohibiting or restricting the use of footways⁶, and is exempted from certain requirements⁷. If the invalid carriage is mechanically propelled it is to be treated for certain purposes⁸ as not being a motor vehicle⁹, and certain provisions¹⁰ do not apply to it¹¹. Certain statutory requirements¹² concerning reflectors and tail lamps do not apply to an invalid carriage, whether or not it is mechanically propelled¹³.

1 'Invalid carriage' means a vehicle, whether mechanically propelled or not, constructed or adapted for the carriage of one person, being a person suffering from some physical defect or disability: Chronically Sick and Disabled Persons Act 1970 s 20(2). As to the meaning of 'disability' see PARA 1063 ante. As to the provision of invalid carriages see HEALTH SERVICES vol 54 (2008) PARA 35.

2 'Prescribed' means prescribed by regulations made by the Secretary of State for Transport: *ibid* s 20(2). Section 20(2) refers to the Minister of Transport, whose functions are now carried out by the Secretary of State for Transport: see the Secretary of State for the Environment Order 1970, SI 1970/1681; the Secretary of State for Transport Order 1976, SI 1976/1775; the Minister of Transport Order 1979, SI 1979/571; and the Transfer of Functions (Transport) Order 1981, SI 1981/238. as to the Secretary of State see PARA 1001 note 6 ante.

Any regulations under the Chronically Sick and Disabled Persons Act 1970 s 20 (as amended) may make different provision for different circumstances and are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 20(3).

As to the requirements which have been prescribed see the Use of Invalid Carriages on Highways Regulations 1988, SI 1988/2268; and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1019.

3 As to the prescribed conditions see the Use of Invalid Carriages on Highways Regulations 1988, SI 1988/2268; and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1019.

4 'Footway' means a way which is a footway, footpath or bridleway within the meaning of the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 64): Chronically Sick and Disabled Persons Act 1970 s 20(2) (amended by the Highways Act 1980 s 343(2), Sch 24 para 19).

5 'Statutory provision' means a provision contained in, or having effect under, any enactment: Chronically Sick and Disabled Persons Act 1970 s 20(2).

6 *Ibid* s 20(1)(a). As to obstruction of highways and footways see HIGHWAYS, STREETS AND BRIDGES vol 21 (2005 Reissue) PARA 348 et seq.

7 See eg the Vehicle Excise and Registration Act 1994 s 5, Sch 2 paras 18, 19 (as amended) (vehicle excise duty); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 750.

8 Ie the purposes of the Road Traffic Regulation Act 1984, the Road Traffic Act 1988 (except s 22A (as added and amended)) and the Road Traffic Offenders Act 1988: see ROAD TRAFFIC.

9 Chronically Sick and Disabled Persons Act 1970 s 20(1)(b) (amended by the Road Traffic Act 1972 s 203(1), Sch 7; the Road Traffic Regulation Act 1984 s 146, Sch 13 para 10; the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 7; and the Road Traffic Act 1991 s 48, Sch 4 para 3). As to the meaning of 'motor vehicle' see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 210.

10 Ie the Road Traffic Act 1988 ss 1, 2 (both as substituted); s 2A (as added); s 3 (as substituted); s 3A (as added); ss 4, 163, 170, 181 (all as amended): see ROAD TRAFFIC.

11 Chronically Sick and Disabled Persons Act 1970 s 20(1)(b) (as amended: see note 9 supra).

12 In the Road Traffic Act 1988 s 83: see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 408.

13 Chronically Sick and Disabled Persons Act 1970 s 20(1)(c) (amended by the Road Traffic (Consequential Provisions) Act 1988 Sch 3 para 7).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1070 Use of invalid carriages on highways

NOTE 10--Refers also to the Road Traffic Act 1988 ss 21, 34: Chronically Sick and Disabled Persons Act 1970 s 20(1)(b) (amended by the Countryside and Rights of Way Act 2000 Sch 7 para 3).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1071. Badges on motor vehicles used by disabled persons.

1071. Badges on motor vehicles used by disabled persons.

Each local authority¹ must issue a badge of a prescribed form² for motor vehicles³ driven by, or used for the carriage of, disabled persons⁴. A badge may be issued to a disabled person of any prescribed description⁵ resident in the area of the issuing authority for one or more vehicles driven by him, or used by him as a passenger⁶. A badge may be issued to an institution concerned with the care of the disabled for any motor vehicle or, as the case may be, for each motor vehicle kept in the area of the issuing authority and used by or on behalf of the institution to carry disabled persons of any prescribed description⁷.

Any badge issued under these provisions may be displayed only in such circumstances and in such manner as may be prescribed⁸. A person who drives a motor vehicle on a road⁹ at a time when a badge of a form prescribed under these provisions is displayed on the vehicle is guilty of an offence unless the badge is issued under these provisions and displayed in accordance with regulations made under them¹⁰.

A local authority must maintain a register showing the holders of badges issued by the authority and the vehicle or vehicles for which each of the badges is held¹¹. A badge so issued remains the property of the issuing authority, and must be returned to it in such circumstances as may be prescribed¹².

Where prescribed conditions¹³ are met in the case of any person, then, if he applies to a local authority for the issue of a badge under these provisions, the authority may by notice refuse the application¹⁴ and, if he holds a badge issued under these provisions by the authority, the authority may by notice require him to return the badge¹⁵. A person whose application is refused or who is required to return his badge under this provision may, within the prescribed time, appeal to the Secretary of State who may confirm or reverse the decision of the local authority; and, if he reverses it, the authority must issue a badge accordingly or, as the case may be, the requirement to return the badge will cease to have effect¹⁶.

1 As to the meaning of 'local authority' see PARA 1005 ante.

2 Anything which under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended) is to be prescribed must be prescribed by regulations made by the Secretary of State for Transport by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 21(7). Section 21(7) refers to the Minister of Transport and Secretary of State, but the functions of the Minister of Transport are now carried out by the Secretary of State for Transport: see PARA 1070 note 2 ante. As to the Secretary of State see PARA 1001 note 6 ante.

Such regulations may make provision (1) as to the cases in which authorities may refuse to issue badges, and as to the fee (if any) which an authority may charge for the issue or reissue of a badge; and (2) as to the continuing validity or effect of badges issued before 1 December 1971 (ie the date on which this provision came into force: see s 21(9); and the Chronically Sick and Disabled Persons Act 1970 (Commencement No 2) Order 1971, SI 1971/1491) in pursuance of any scheme having effect under the National Assistance Act 1948 s 29 (as amended) (see PARA 1020 et seq ante); and (3) as to any transitional matters, and in particular the application to badges issued under this provision of orders made before the time when it came into force and operating with reference to any such badges as are referred to in head (2) supra, being orders made, or at that time having effect as if made, under the Road Traffic Regulation Act 1967 (largely repealed: see ROAD TRAFFIC): Chronically Sick and Disabled Persons Act 1970 s 21(7) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 11).

As to the regulations made see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (as amended).

3 'Motor vehicle' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 210): Chronically Sick and Disabled Persons Act 1970 s 21(8) (amended by the Road Traffic Regulation Act 1984 s 146, Sch 13 para 11).

4 Chronically Sick and Disabled Persons Act 1970 s 21(1). As to the meaning of 'disabled' see PARA 1063 ante.

The badge so issued for any vehicle or vehicles may be displayed on it or on any of them either inside or outside the area of the issuing authority: s 21(1)(a). Any power under the Road Traffic Regulation Act 1984 s 124, Sch 9 Pt III (as amended) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 738) to make regulations requiring that orders under that Act include exemptions is to be taken to extend to requiring that an exemption given with reference to badges issued by one authority is to be given also with reference to badges issued by other authorities: Chronically Sick and Disabled Persons Act 1970 s 21(1)(b) (amended by the Road Traffic Regulation Act 1984 Sch 13 para 11). See the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1986, SI 1986/178 (as amended).

5 As to the prescribed descriptions see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740.

6 Chronically Sick and Disabled Persons Act 1970 s 21(2) (substituted by the Road Traffic Act 1991 s 35).

7 Chronically Sick and Disabled Persons Act 1970 s 21(4) (amended by the Road Traffic Act 1991 ss 35, 83, Sch 8).

8 Chronically Sick and Disabled Persons Act 1970 s 21(4A) (added by the Road Traffic Act 1991 s 35). As to the circumstances and manner prescribed see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (as amended).

9 lie within the meaning of the Road Traffic Act 1988 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 206).

10 Chronically Sick and Disabled Persons Act 1970 s 21(4B) (added by the Road Traffic Act 1991 s 35). A person guilty of an offence under the Chronically Sick and Disabled Persons Act 1970 s 21(4B) (as so added) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 21(4C) (added by the Road Traffic Act 1991 s 35). As to the standard scale see PARA 1014 note 11 ante.

11 Chronically Sick and Disabled Persons Act 1970 s 21(5) (amended by the Road Traffic Act 1991 s 35, Sch 8).

12 Chronically Sick and Disabled Persons Act 1970 s 21(6). As to the circumstances prescribed see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (as amended).

A badge which is required to be returned to the issuing authority may not be displayed on any vehicle, and a badge which is required to be so returned by virtue of a notice under the Chronically Sick and Disabled Persons Act 1970 s 21(7A) (as added) (see note 14 infra) must be returned within the prescribed time and may not be displayed on any vehicle after that time: s 21(7D) (added by the Transport Act 1982 s 68).

13 The conditions that may be prescribed for these purposes are conditions relating to the misuse of badges issued under the Chronically Sick and Disabled Persons Act 1970 s 21 (as amended): see s 21(7A) (as added: see note 14 infra). As to the conditions prescribed see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (as amended).

14 Chronically Sick and Disabled Persons Act 1970 s 21(7A)(a) (s 21(7A) added by the Transport Act 1982 s 68). Notice must be given by post: Chronically Sick and Disabled Persons Act 1972 s 21(7B) (added by the Transport Act 1972 s 68).

15 Chronically Sick and Disabled Persons Act 1970 s 21(7A)(b) (as added: see note 14 supra).

16 Ibid s 21(7C) (added by the Transport Act 1972 s 68). Regulations may provide for the procedure to be followed in connection with such appeals, but the Secretary of State must consult with the Council on Tribunals before making such regulations: Chronically Sick and Disabled Persons Act 1972 s 21(7E) (added by the Transport Act 1972 s 68). As to the regulations made see the Disabled Persons (Badges for Motor Vehicles) Regulations 1982, SI 1982/1740 (as amended). As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq.

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1071 Badges on motor vehicles used by disabled persons

TEXT AND NOTES--Where it appears to a constable or civil enforcement officer (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 888) that a vehicle is displaying a badge purporting to be of prescribed form, he may require any person in it, or about to get in it, to produce the badge for inspection: see the 1970 Act (4BA)-(4BD) (added by the Traffic Management Act 2004 s 94(3) (in force in relation to Wales: SI 2006/2826)).

NOTES--SI 1982/1740 replaced in relation to England: Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000, SI 2000/682 (amended by SI 2000/1507, SI 2005/617, SI 2007/2531 (amended by SI 2007/2600)). As to the recognition of disabled persons' badges issued outside Great Britain see PARA 1071A.

NOTE 4--SI 1986/178 replaced: Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000, SI 2000/683.

TEXT AND NOTE 7--References to 'institution' are now to 'organisation': 1970 Act s 21(4) (amended by the Disability Discrimination Act 2005 Sch 1 para 41 (in force in relation to England: SI 2005/1676)).

NOTE 10--1970 Act s 21(4B), (4C) amended by Traffic Management Act 2004 s 94(2), (4) (in force in relation to Wales: SI 2006/2826).

NOTE 16--In 1970 Act s 21(7E) for 'Council on Tribunals' substitute 'Administrative Justice and Tribunals Council': Tribunals, Courts and Enforcement Act 2007 Sch 8 para 2.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1071A. Recognition of disabled persons' badges issued outside Great Britain.

1071A. Recognition of disabled persons' badges issued outside Great Britain.

A recognised badge¹ may be displayed on a motor vehicle only in such circumstances and in such manner as may be prescribed by regulations² made by the appropriate national authority³. A person who drives a motor vehicle on a road⁴ at a time when a badge purporting to be a recognised badge is displayed on the vehicle is guilty of an offence unless the badge is a recognised badge and is displayed in accordance with such regulations⁵. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁶. Where it appears to a constable or enforcement officer⁷ that there is displayed on any motor vehicle a badge purporting to be a recognised badge, he may require any person who is in the vehicle or appears to have been in, or to be about to get into, the vehicle to produce the badge for inspection⁸. The power thus conferred on an enforcement officer is exercisable only for purposes connected with the discharge of his functions in relation to a stationary vehicle⁹. A person who without reasonable excuse fails to produce a badge when required to do so¹⁰ is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹.

1 For the purposes of the Chronically Sick and Disabled Persons Act 1970 ss 21A, 21B, a 'recognised badge' means (1) a badge issued under the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 s 14, or any provision replacing s 14, as from time to time amended; or (2) a badge issued under provisions of the law of any jurisdiction outside the United Kingdom that are specified in regulations made by the appropriate national authority: 1970 Act s 21A(1) (ss 21A-21C added by the Disability Discrimination Act 2005 s 9). 'Appropriate national authority' means, in relation to England, the Secretary of State, and, in relation to Wales, the National Assembly for Wales: 1970 Act s 21C(3). In exercising the power under head (2), the appropriate national authority may specify a provision only if it appears to the authority that badges issued under the provision are issued by reference to persons who are, or include, disabled persons: s 21A(2).

2 Any power to make regulations under *ibid* s 21A or 21B is exercisable by statutory instrument and includes power to make different provision for different cases, and to make incidental, supplementary, transitional or consequential provision: s 21C(1). A statutory instrument containing regulations made under s 21A or 21B by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 21C(2).

3 *Ibid* s 21A(3). Various concessions apply in respect of vehicles displaying a recognised badge as they apply in respect of vehicles lawfully displaying a badge issued under s 21 (see *PARA 1071*): see s 21B.

4 *Ie* within the meaning of the Road Traffic Act 1988.

5 1970 Act s 21A(4).

6 *Ibid* s 21A(5). As to the standard scale see *PARA 1014* NOTE 11.

7 For the meaning of 'enforcement officer' see *ibid* s 21(4BB); definition applied by virtue of s 21A(9).

8 *Ibid* s 21A(6).

9 *Ibid* s 21A(7).

10 *Ie* under *ibid* s 21A(6).

11 *Ibid* s 21A(8).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1072. Disabled persons leaving special education.

1072. Disabled persons leaving special education.

Where a local education authority¹ has made a statement² in respect of a child³ under the age of 14, and the statement is still maintained by the authority at a certain time⁴, the authority must at that time require the appropriate officer⁵ to give to the authority his opinion as to whether the child is or is not a disabled person⁶.

Where a local education authority makes any such statement in respect of a child after he has attained the age of 14, or a local education authority maintains any such statement in respect of a child in whose case the appropriate officer has given his opinion⁷ that the child is not a disabled person, but the authority has become aware of a significant change in the mental or physical condition of the child giving it reason to believe that he may now be a disabled person, the authority must, at the time of making the statement or (as the case may be) of becoming aware of that change, require the appropriate officer to give to the authority his opinion as to whether the child is or is not a disabled person⁸.

The responsible authority⁹ must give to the appropriate officer written notification¹⁰ of the date on which any disabled student¹¹ will cease to be of compulsory school age; and the notification must be given not earlier than 12 months, nor later than eight months, before that date¹².

Where, in the case of a disabled student over compulsory school age who is receiving relevant full-time education¹³, it appears to the responsible authority that the student will cease to receive relevant full-time education on a date ('the leaving date') on which he will be under the age of 19 years and eight months, the responsible authority must give written notification¹⁴ to the appropriate officer¹⁵. If at any time it appears to the responsible authority that a disabled student has ceased to receive relevant full-time education or will cease to do so on a date less than eight months after that time, and that no notification¹⁶ has been given, but that had the responsible authority for the time being been aware of his intentions eight months or more before that date, it would have been required to give notification¹⁷ with respect to him, that authority must, as soon as is reasonably practicable, give written notification¹⁸ to the appropriate officer of his name and address and of the date on which he ceased to receive, or will cease to receive, that education¹⁹.

When the appropriate officer receives a notification²⁰ he must (subject to certain exceptions²¹) make arrangements for the local authority²² of which he is an officer to carry out an assessment of the needs of that person with respect to the provision by that authority of any statutory services²³ for that person in accordance with any of the welfare enactments²⁴.

The responsible authority²⁵ must for these purposes²⁶ keep under review the date when any disabled student²⁷ is expected to cease to receive relevant full-time education²⁸.

1 For the meaning of 'local education authority' see the Education Act 1996 ss 12, 579(1) (definition applied by the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(9) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt II para 91; and the Education Act 1996 s 582(1), Sch 37 Pt I para 64)); and EDUCATION vol 15(1) (2006 Reissue) PARA 20.

Expressions used in the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5 (as amended), and not defined in that Act, have the same meaning as in the Education Act 1996 or the Further and Higher Education Act 1992: see the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(9) (as so amended).

2 I.e. a statement of a child's educational needs under the Education Act 1981 s 7 (repealed), the Education Act 1993 s 168 (repealed), or the Education Act 1996 s 324 (see EDUCATION vol 15(2) (2006 Reissue) PARA 996 et

seq): Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(1)(a) (amended by the Education Act 1996 Sch 37 Pt I para 64).

3 'Child' means a person of compulsory school age or a person who has attained that age but not the age of 19 and is registered as a pupil at a school or as a student at an establishment of higher or further education: Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(9) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt III para 97; and the Further and Higher Education Act 1992 Sch 8 Pt II para 91). For the meaning of 'compulsory school age' see the Education Act 1996 s 8 (definition applied by the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(9) (as amended: see note 1 supra)); and EDUCATION vol 15(1) (2006 Reissue) PARA 15. 'Establishment of higher or further education' means an institution which provides higher education or further education (or both): s 5(9) (definition added by the Education Reform Act 1988 Sch 12 Pt III para 97). As to further education and higher education see EDUCATION vol 15(2) (2006 Reissue) PARA 579 et seq.

4 Ie whichever is the earlier of the following times, namely: (1) the time when the local education authority institutes the first annual review of the statement following the child's fourteenth birthday; and (2) any time falling after that birthday when it institutes a re-assessment of his educational needs: Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(1)(b).

5 'The appropriate officer', in relation to the child or person referred to, means such officer as may be appointed for these purposes by the local authority for the area in which that child or person is for the time being ordinarily resident: *ibid* s 5(9).

6 *Ibid* s 5(1) (as amended: see note 2 supra). For the meaning of 'disabled person' see PARA 1016 note 11 ante.

Provision may be made for the transfer of a statement, and the duty to maintain it, from one authority to another: see s 5(8) (amended by the Education Act 1996 Sch 37 Pt I para 64).

7 Ie in pursuance of the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(1) (as amended: see note 2 supra).

8 *Ibid* s 5(2).

9 'Responsible authority', whether or not the appropriate officer has given his opinion that a person is a disabled person to that authority, means (1) in relation to a child at school, the local education authority which is responsible for the child for the purposes of the Education Act 1996 Pt IV (ss 312-349); (2) in relation to a person receiving full-time further education or higher education at an institution within the further education sector or the higher education sector, the governing body of the institution; and (3) in relation to a person for whom a further education funding council has secured full-time further education at an institution (other than a school) outside the further education sector or the higher education sector, the council: Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(9) (amended by the Further and Higher Education Act 1992 Sch 8 Pt II para 91; and the Education Act 1996 Sch 37 Pt I para 64).

10 Ie for the purposes of the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(5) (as amended: see note 24 *infra*).

11 'Disabled student' means a person in respect of whom the appropriate officer has given his opinion that he is a disabled person: *ibid* s 5(3) (substituted by the Further and Higher Education Act 1992 Sch 8 Pt II para 91).

12 Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(3A) (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 91). The notification must state (1) his name and address; and (2) whether or not he intends to remain in full-time education and, if he does, the name of the school or other institution at which the education will be received: Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(3A) (as so added).

13 Ie full-time education at a school, or full-time further or higher education at an institution other than a school: *ibid* s 5(3B) (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 91).

14 Ie for the purposes of the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(5) (as amended: see note 24 *infra*). The notification must state his name and address and the leaving date; and must be given not earlier than 12 months, nor later than eight months, before the leaving date: s 5(3C) (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 91).

15 Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(3B) (as added: see note 13 *supra*).

16 Ie under *ibid* s 5(3B) (as added: see note 13 *supra*).

17 See note 16 supra.

18 le for the purposes of the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(5) (as amended: see note 24 infra).

19 Ibid s 5(4) (substituted by the Further and Higher Education Act 1992 Sch 8 Pt II para 91).

20 le notification under the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(3A) (as added: see note 12 supra) that the disabled student does not intend to remain in full-time education, or under s 5(3B) (as added: see note 15 supra) or s 5(4) (as substituted: see note 19 supra).

21 The exceptions are:

64 (1) If a notification has been given to the appropriate officer with respect to any person under ibid s 5(3A) (as added: see note 12 supra) that he does not intend to remain in full-time education or under s 5(3B) (as added: see note 15 supra) or s 5(4) (as substituted: see note 19 supra), but it subsequently appears to the responsible authority that the person will be receiving relevant full-time education at a time later than the date specified in the notification, the authority must give written notification of the relevant facts to that officer as soon as is reasonably practicable: s 5(6) (amended by the Further and Higher Education Act 1992 Sch 8 Pt II para 91). On receiving any such notification that officer ceases to be required under the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(5) (as amended: see note 24 infra) to make arrangements for the assessment of the needs of the person in question: s 5(6) (as so amended). This provision is without prejudice to the operation of s 5(5) (as amended) in relation to any further notification given with respect to that person under s 5(3A) (as added) that he does not intend to remain in full-time education or under s 5(3B) (as added) or s 5(4) (as substituted): s 5(6) (as so amended).

65 (2) Nothing in s 5(5) (as amended) requires the appropriate officer to make arrangements for the assessment of the needs of a person (a) if, having attained the age of 16, he has requested that such arrangements should not be made under that provision; or (b) if, being under that age, his parent or other person who is not a parent of his but who has parental responsibility for him has made such a request: s 5(7) (amended by the Children Act 1989 s 108(5), Sch 13 para 60). 'Parent' means in the case of a child who is illegitimate, his mother, to the exclusion of his father: Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1). 'Parental responsibility' has the same meaning as in the Children Act 1989 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134): Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1) (definition added by the Children Act 1989 Sch 13 para 61).

22 As to the meaning of 'local authority' see PARA 1005 ante.

23 'Statutory services', in relation to England and Wales, means services under any arrangements which a local authority is required to make by virtue of welfare enactments: Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1). 'Services' includes facilities: s 16(1). For the meaning of 'welfare enactments' see PARA 1016 note 12 ante.

24 Ibid s 5(5) (amended by the Further and Higher Education Act 1992 Sch 8 Pt II para 91). Any such assessment must be carried out (1) in the case of a notification under the Disabled Persons (Services, Consultation and Representation) Act 1986 s 5(3A) or s 5(3B) (as added: see notes 12, 15 supra), not later than the end of the period of five months beginning with the date of receipt of the notification; or (2) in the case of a notification under s 5(4) (as substituted: see note 19 supra), before the date specified in the notification, if reasonably practicable, and in any event not later than the end of the period of five months beginning with the date of receipt of the notification: s 5(5) (as so amended).

25 For the meaning of 'responsible authority' see note 9 supra (definition applied by ibid s 6(2)).

26 le for the purposes of ibid s 5 (as amended).

27 For the meaning of 'disabled student' see note 11 supra (definition applied by ibid s 6(2)).

28 Ibid s 6(1) (substituted by the Further and Higher Education Act 1992 Sch 8 Pt II para 92). As to the meaning of 'relevant full-time education' see note 13 supra (definition applied by the Disabled Persons (Services, Consultation and Representation) Act 1986 s 6(2)).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1072 Disabled persons leaving special education

NOTE 1--1986 Act s 5(9) further amended: Learning and Skills Act 2000 Sch 9 para 12; 2001 Act Sch 8 para 18.

TEXT AND NOTE 4--Words 'under the age of 14' omitted: 1986 Act s 5(1)(a) (amended by the Special Educational Needs and Disability Act 2001 Sch 8 para 17).

NOTE 4--Now, whichever is the earlier of the following times, namely: (1) the time when it institutes a review of the statement; and (2) any time falling after it has carried out that review when they institute a re-assessment of his educational needs: 1986 Act s 5(1)(b) (amended by the 2001 Act Sch 8 para 17).

NOTE 9--In head (3), after 'further education funding council' insert 'or the National Assembly for Wales'; and after 'the council' insert 'or the Assembly, as the case may be': 1986 Act s 5(9) (further amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1073. Reports to Parliament.

1073. Reports to Parliament.

The Secretary of State¹ must annually lay before Parliament a report containing the following information, namely:

- 128 (1) such information as the Secretary of State considers appropriate with respect to the development of health and social services in the community for persons suffering from mental illness or mental handicap² who are not resident in hospitals³;
- 129 (2) information with respect to (a) the number of persons receiving treatment for mental illness as in-patients in health service hospitals⁴, and (b) the number of persons receiving treatment for mental handicap as in-patients in such hospitals, in each case analysed by reference to age and length of stay⁵; and
- 130 (3) such other information (if any) as the Secretary of State considers appropriate to be included in the report⁶.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 'Mental handicap' has the same meaning as in the Juries Act 1974 s 1, Sch 1 Group D (as substituted and amended) (see JURIES vol 61 (2010) PARA 804): Disabled Persons (Services, Consultation and Representation) Act 1986 s 11(2). As to mental health generally see MENTAL HEALTH.

3 Ibid s 11(1)(a). 'Hospital' means a health service hospital within the meaning of the National Health Service Act 1977 (see HEALTH SERVICES vol 54 (2008) PARA 12), or any accommodation provided by any person (eg voluntary organisations) pursuant to arrangements made under s 23(1) (as amended) and used as a hospital: Disabled Persons (Services, Consultation and Representation) Act 1986 s 16(1).

4 'Health service hospital' has the same meaning as in the National Health Service Act 1977, except that it does not include a special hospital: Disabled Persons (Services, Consultation and Representation) Act 1986 s 11(2). See also HEALTH SERVICES vol 54 (2008) PARAS 12, 21.

5 Ibid s 11(1)(b).

6 Ibid s 11(1)(c).

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

1073 Reports to Parliament

TEXT AND NOTES--In the Disabled Persons (Services, Consultation and Representation) Act 1986 s 11, s 11(1ZB) extends to England and Wales only and s 11(1) extends to Scotland only: s 11(1ZA) (added by Health and Social Care Act 2001 s 62(2)).

The Secretary of State must annually lay before Parliament (1) a report containing such information as he considers appropriate with respect to the development of health and social services for persons with mental illness; and (2) a report containing such information as he considers appropriate with respect to the development of

health and social services for persons with learning disability; and each of those reports may contain such other information as the Secretary of State considers appropriate: Disabled Persons (Services, Consultation and Representation) Act 1986 s 11(1ZB) (added by Health and Social Care Act 2001 s 62(2)). In the Disabled Persons (Services, Consultation and Representation) Act 1986 s 11 'learning disability' means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning: s 11(2) (substituted by Health and Social Care Act 2001 s 62(3)).

NOTE 3--Definition of 'hospital' in 1986 Act s 16(1) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 90(d).

NOTE 4--The reference to a special hospital is now to a hospital at which high security psychiatric services are provided (see MENTAL HEALTH vol 30(2) (Reissue) PARA 418): 1986 Act s 11(2) (amended by SI 2000/90).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/5. CHRONICALLY SICK AND DISABLED PERSONS/1073A. Disabled people: Right to control provision of services.

1073A. Disabled people: Right to control provision of services.

1. Introductory

The purpose of the Welfare Reform Act 2009 Pt 2 (ss 38-50) is to enable disabled people aged 18 or over to exercise greater choice in relation to, and greater control over, the way in which relevant services are provided to or for them, in cases where the provision of the relevant services is a function of a relevant authority: Welfare Reform Act 2009 s 38. For these purposes 'relevant services' means services which are provided to or for the benefit of a disabled person ('P') (whether or not in connection with P's disability), and which relate to one or more of the following matters: (1) the provision of further education for P; (2) facilitating the undertaking by P of further education or higher education; (3) the provision of training for P; (4) securing employment for P; (5) facilitating P's continued employment; (6) enabling P to live independently or more independently in P's home; (7) the provision of residential accommodation for P; (8) enabling P to overcome barriers to participation in society: s 39(1), (2). 'Further education' and 'higher education', in relation to England and Wales, have the same meaning as in the Education Act 1996: Welfare Reform Act 2009 s 39(8). Relevant services also include the provision by or on behalf of a relevant authority to or for the benefit of a disabled person of grants or loans relating to one or more of the matters mentioned in heads (1)-(8): s 39(3). Relevant services do not include excluded services (provision as to direct payments relating to excluded services being made by other legislation): s 39(4). Section 39(4) is subject to s 44(4) (which relates to pilot schemes) and to s 48 (which gives power to repeal the exclusion of community care services): s 39(5). In relation to England and Wales, the following are excluded services: (a) community care services (as defined by the National Health Service and Community Care Act 1990 s 46(3) (see PARA 1013)); (b) services provided under the Carers and Disabled Children Act 2000; and (c) services provided under the Children Act 1989 s 17 (provision of services for children in need, their families and others) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 851 et seq): Welfare Reform Act 2009 ss 39(6), 50. 'Relevant authority' means a Minister of the Crown or government department, the Scottish Ministers, the Welsh Ministers, a local authority, a person or body whose functions are exercised on behalf of the Crown, any other body which meets conditions A and B below: s 40(1). Condition A is that the body is established by virtue of Her Majesty's prerogative or by an enactment or is established in any other way by a Minister of the Crown acting as such or by a government department: s 40(2). Condition B is that the body's revenues derive wholly or mainly from public funds: s 40(3). In s 40(1) 'local authority' means a local authority within the meaning of the Local Government Act 1972, a council constituted under the Local Government etc (Scotland) Act 1994 s 2, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority, or the Council of the Isles of Scilly: Welfare Reform Act 2009 s 40(4). In s 40(2) 'Minister of the Crown' includes the Scottish Ministers and the Welsh Ministers: s 40(5).

2. Power to make regulations

The appropriate authority (see PARA 1073A.1) may by regulations made by statutory instrument make any provision that would in the opinion of the authority making the regulations serve the purpose of the Welfare Reform Act 2009 Pt 2 (ss 38-50): s 41(1). Such regulations may, in particular, make provision for and in connection with requiring a relevant authority to take the

following steps in relation to a disabled person ('P') for whom it is obliged, or has decided, to provide, or arrange the provision of, relevant services (see PARA 1073A.1): (1) to inform P of the right to control conferred by virtue of the regulations, of the value of the relevant services to which P is entitled and of the choices available to P by virtue of the regulations; (2) to work with P to determine the outcomes to be achieved by the provision of the relevant services; (3) to work with P to prepare a plan (a 'support plan') setting out how those outcomes will be achieved; (4) to work with P to review and revise the support plan in prescribed circumstances; (5) if P so requests, to make payments to P in respect of P securing the provision of an equivalent service; (6) to the extent that P chooses to receive relevant services provided or arranged by the relevant authority, to provide, or arrange for them to be provided, in accordance with P's support plan as far as it is reasonably practicable to do so: s 41(2). The regulations may also (a) specify who is or is not to be treated as a disabled person for any purpose of the regulations; (b) make provision about the circumstances in which a relevant authority is to be taken to have decided to provide a relevant service to a person; (c) make provision as to matters to which a relevant authority must, or may, have regard when making a decision for the purposes of a provision of the regulations; (d) make provision as to steps which a relevant authority must, or may, take before, or after, the relevant authority makes a decision for the purposes of a provision of the regulations (including provision requiring the relevant authority to review its decision): s 41(3). The regulations may enable or require the disclosure of information by one relevant authority to another for prescribed purposes of the regulations: s 41(4). For the purposes of Pt 2, the regulations may vary the conditions attached to any power of a relevant authority to provide financial assistance to disabled people, and/or vary the conditions attached to any power of a relevant authority to provide financial assistance to another relevant authority in connection with the provision of relevant services to disabled people by the other authority: s 41(5). The regulations may also require a relevant authority exercising any function under the regulations to have regard to any guidance given from time to time by the appropriate authority: s 41(6). For further provision as to the appropriate authority by which regulations under s 41 are to be made, see s 45. For supplementary provision about regulations made under s 41, including an order-making power that enables the exclusion of community care services to be fully removed, see ss 46-50. As to the meaning of 'community care services' see PARA 1073A.1.

In the following provisions, 'direct payments regulations' means regulations under s 41 making provision by virtue of s 41(2)(e) (see head (5)) and 'direct payments' means payments made by a relevant authority under the regulations: s 42(1). Direct payments regulations relating to a relevant service ('the qualifying service') of a relevant authority ('the providing authority') may in particular (i) specify circumstances in which the providing authority is or is not required to comply with a request for direct payments to be made under the regulations, whether those circumstances relate to the disabled person or to the qualifying service; (ii) make provision about the manner in which a request for direct payments is to be made; (iii) make provision enabling a disabled person to require a providing authority to assess the amount of the payments to which the person would be entitled if the person were to request the authority to make them; (iv) enable a disabled person to require a providing authority to comply with a request to provide direct payments in place of the qualifying service (or its provision at certain times or in certain circumstances) while providing, or continuing to provide, other relevant services (or providing, or continuing to provide, the qualifying service at other times or in other circumstances); (v) make provision displacing functions or obligations of the providing authority with respect to the provision of the qualifying service (whether arising under any enactment, under any trust or otherwise) to such extent and subject to such conditions as may be prescribed: s 42(2). Direct payments regulations must include provision excluding any duty of a providing authority to comply with a request for direct payments, or a class of such requests, if compliance with the request, or with requests falling within that class, would in all the circumstances impose an unreasonable financial burden on the providing authority: s 42(3). Direct payments regulations may (A) make provision for and in connection with requiring or authorising the providing authority to make direct payments to the disabled person or such

other person as the authority may determine ('the payee') in accordance with the regulations in respect of the person securing the provision of the equivalent service; (B) make provision as to the conditions falling to be complied with by the payee in relation to the direct payments; (C) prescribe circumstances in which the providing authority may or must terminate the making of direct payments; (D) prescribe circumstances in which the providing authority may require repayment (whether by the payee or otherwise) of the whole or any part of the direct payments; (E) make provision for any sum falling to be paid or repaid to the providing authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority; (F) prescribe circumstances in which any sum is to cease to be payable by virtue of head (D); (G) make provision authorising direct payments to be made to a prescribed person on behalf of the disabled person: s 42(4). For the purposes of head (B), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to what is or is not to be regarded as an equivalent service, the securing of the provision of the equivalent service, the provider of the service, the person to whom the payments are made in respect of the provision of the service, or the provision of the service: s 42(5).

Regulations under s 41 may make provision for and in connection with enabling any request or consent for the purposes of the regulations (including any request or consent relating to payments by virtue of s 41(2)(e) (see head (5)) to be made or given on behalf of a disabled person who falls within s 43(2) by a person of a prescribed description: s 43(1). A person falls within s 43(2), in relation to England and Wales, if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, in relation to the decision concerned: see s 43(2).

As to the making of regulations under s 41 having temporary effect and constituting pilot schemes, see s 44.

UPDATE

1063-1073 Chronically sick and disabled persons

As to the rights of disabled persons to control the way certain services are provided to them, see the Welfare Reform Act 2009 Pt 2 (ss 38-50); and PARA 1073A.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1074. Removal to suitable premises of persons in need of care and attention.

6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY

1074. Removal to suitable premises of persons in need of care and attention.

Statutory provisions¹ apply so as to secure the necessary care and attention for persons who (1) are suffering from grave chronic disease or, being aged, infirm or physically incapacitated, are living in insanitary conditions²; and (2) are unable to devote to themselves, and are not receiving from other persons, proper care and attention³.

If the proper officer⁴ certifies in writing to the appropriate authority⁵ that he is satisfied after thorough inquiry and consideration that in the interests of any such person⁶ residing in the area of the authority, or for preventing injury to the health of, or serious nuisance to, other persons, it is necessary to remove any such person⁷ from the premises in which he is residing, the appropriate authority may apply to a court⁸ for an order⁹. On such an application the court, if satisfied on oral evidence of the allegations in the certificate and that it is expedient so to do, may order the removal of the person, by such officer of the appropriate authority as may be specified in the order, to a suitable hospital¹⁰ or other place in, or within convenient distance of, the area of the appropriate authority, and his detention and maintenance there¹¹. Such an order may be made so as to authorise a person's detention for any period not exceeding three months, and the court may from time to time by order extend that period for a further period not exceeding three months¹².

The court must not entertain an application for an order¹³ unless, seven clear days before the making of the application, notice¹⁴ of the intended application, and of the time and place at which it is proposed to be made, has been given to the person in respect of whom the application is made or to some person in charge of him¹⁵; and the court must not order the removal of a person to any premises, unless either the person managing the premises has been heard in the proceedings or seven clear days' notice has been given to him of the intended application and of the time and place at which it is proposed to be made¹⁶.

These provisions¹⁷ have effect in substitution for any previous provisions¹⁸ for the like purposes, but this does not affect any enactment providing for the removal to, or detention in, hospital of persons suffering from notifiable or infectious diseases¹⁹.

1 Ie the National Assistance Act 1948 s 47 (as amended).

2 Ibid s 47(1)(a).

3 Ibid s 47(1)(b).

4 The legislation refers to the 'medical officer of health', but this is now to be construed as a reference to the proper officer: see the Local Government Act 1972 s 251(1), Sch 29 Pt I para 4(1). In relation to any purpose and any local authority or other body or any area, 'proper officer' must be construed as a reference to an officer appointed for that purpose by that body or for that area, as the case may be: see s 270(3); and LOCAL GOVERNMENT vol 69 (2009) PARA 431.

5 For these purposes, the appropriate authorities are the councils of districts and London boroughs and the Common Council of the City of London and, in Wales, the councils of counties and county boroughs: National Assistance Act 1948 s 47(12) (amended by the London Government Act 1963 s 93(1), Sch 18 Pt II (both repealed); the Local Government Act 1972 s 251, Sch 29 Pt II para 44(1); and the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 2(1)).

6 Ie any person falling within heads (1) and (2) in the text.

7 See note 6 *supra*.

8 Ie a court of summary jurisdiction having jurisdiction in the place where the premises are situated: see the National Assistance Act 1948 s 47(2). As to courts of summary jurisdiction see MAGISTRATES.

9 Ibid s 47(2). The order referred to is an order under s 47(3): see the text and note 11 *infra*.

10 For the meaning of 'hospital' see PARA 1032 note 3 *ante*.

11 National Assistance Act 1948 s 47(3).

12 Ibid s 47(4).

13 Ie under *ibid* s 47(3) or s 47(4).

14 Any notice under *ibid* s 47 (as amended) may be served by post: s 47(14).

15 Ibid s 47(7)(a). There is, however, an expeditious procedure which dispenses with the need for this notice: see PARA 1076 *post*.

16 Ibid s 47(3) proviso.

17 Ie *ibid* s 47 (as amended).

18 Ie any provisions contained in, or having effect under, any public general or local Act passed before the passing of the National Assistance Act 1947 (ie 13 May 1948): see s 47(13).

19 Ibid s 47(13) proviso. As to notifiable or infectious diseases see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 462010 PARA 884 *et seq*.

UPDATE

1074-1078 Removal to suitable premises of persons in need of care and attention ... Recovery of cost of maintenance of persons removed

These provisions do not apply to a person ('P') where either (1) an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of the Mental Capacity Act 2005 Sch A1) (see MENTAL HEALTH) to provide P with proper care and attention; or (2) an authorisation under Sch A1 is in force, or the managing authority of a hospital or care home is under a duty under Sch A1 para 24 to request a standard authorisation, and P is, or would be, the relevant person in relation to the authorisation: National Assistance Act 1948 s 47(1A)-(1C) (added by Mental Health Act 2007 Sch 9 para 12).

1074 Removal to suitable premises of persons in need of care and attention

NOTE 8--National Assistance Act 1948 s 47(2) amended: Courts Act 2003 Sch 8 para 81.

NOTE 9--The authority is permitted to use reasonable force to prevent such a person from leaving the place to which they are removed: *Re PS (incapacitated or vulnerable adult)* [2007] EWHC 623 (Fam), [2007] 2 FLR 1083.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1075. Revocation or variation of removal order.

1075. Revocation or variation of removal order.

A removal order¹ may be varied by an order of the court so as to substitute such other suitable place in, or within convenient distance of, the area of the appropriate authority² as the court may determine³, but the court must not so vary a removal order, unless either the person managing the substituted premises has been heard in the proceedings or seven clear days' notice has been given to him of the intended application and of the time and place at which it is proposed to be made⁴.

At any time after the expiration of six clear weeks from the making of a removal order or an order extending the period of detention⁵ an application may be made to the court by or on behalf of the person in respect of whom the order was made, and on any such application the court may, if in the circumstances it appears expedient so to do, revoke the order⁶. However, the court must not entertain such an application unless, seven clear days before the making of the application, notice has been given of the intended application, and of the time and place at which it is proposed to be made, to the proper officer⁷.

1 le an order under the National Assistance Act 1948 s 47(3): see PARA 1074 ante.

2 As to the appropriate authority see PARA 1074 note 5 ante.

3 National Assistance Act 1948 s 47(5).

4 See *ibid* s 47(3) proviso (applied by s 47(5)).

5 le an order under *ibid* s 47(3) or s 47(4): see PARA 1074 ante.

6 *Ibid* s 47(6). An order under the expeditious procedure (see PARA 1076 post), which can only be made for a three-week period in the first instance, cannot be revoked under s 47(6): see the National Assistance (Amendment) Act 1951 s 1(4)(a); and PARA 1076 note 13 post.

7 See the National Assistance Act 1948 s 47(7)(b). As to the proper officer see PARA 1074 note 4 ante.

UPDATE

1074-1078 Removal to suitable premises of persons in need of care and attention ... Recovery of cost of maintenance of persons removed

These provisions do not apply to a person ('P') where either (1) an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of the Mental Capacity Act 2005 Sch A1) (see MENTAL HEALTH) to provide P with proper care and attention; or (2) an authorisation under Sch A1 is in force, or the managing authority of a hospital or care home is under a duty under Sch A1 para 24 to request a standard authorisation, and P is, or would be, the relevant person in relation to the authorisation: National Assistance Act 1948 s 47(1A)-(1C) (added by Mental Health Act 2007 Sch 9 para 12).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1076. Expeditious order for removal of person in need of care and attention.

1076. Expeditious order for removal of person in need of care and attention.

A removal order¹ may be made without notice² to the person who is to be removed or to any person in charge of him if the proper officer³ and another registered medical practitioner⁴ certify that in their opinion it is necessary in the interests of that person to remove him without delay⁵. In such a case, if the applicant⁶ shows that the manager of the hospital or other place to which the person is to be removed agrees to accommodate him there, the manager need not be heard or be given notice⁷.

The application may be made either by the appropriate authority⁸ or by the proper officer if he is authorised to do so by the appropriate authority⁹. The order may be made either by a court of summary jurisdiction having jurisdiction for the area¹⁰, or by a single justice¹¹ with jurisdiction in the area; and the order may, if the court or justice thinks it necessary, be made *ex parte*¹².

The order can only authorise a person's detention for a period not exceeding three weeks¹³; but otherwise, with certain modifications¹⁴, the provisions relating to removal orders¹⁵ apply¹⁶.

1 Ie an order under the National Assistance Act 1948 s 47(3): see PARA 1074 ante.

2 Ie the notice required by *ibid* s 47(7)(a): see PARA 1074 ante.

3 As to the proper officer see PARA 1074 note 4 ante.

4 For the meaning of 'registered medical practitioner' see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 4.

5 See the National Assistance (Amendment) Act 1951 s 1(1).

6 As to the applicant see the text and notes 8-9 *infra*.

7 Ie the National Assistance Act 1948 s 47(3) proviso (see PARA 1074 ante), which requires the manager to be heard or to be given notice, does not apply: see the National Assistance (Amendment) Act 1951 s 1(2).

8 As to the appropriate authority see PARA 1074 note 5 ante.

9 See the National Assistance (Amendment) Act 1951 s 1(3).

10 Ie a court having jurisdiction in the place where the premises are situated in which the person in respect of whom the application is made resides: see *ibid* s 1(3). As to courts of summary jurisdiction see MAGISTRATES.

11 When the order is made by a single justice, the court with jurisdiction to extend the period of detention under the National Assistance Act 1948 s 47(4) or to vary the place of detention under s 47(5) is a court of summary jurisdiction having jurisdiction in the same place as that single justice: see the National Assistance (Amendment) Act 1951 s 1(4)(b). As to extension of the period of detention see PARA 1074 ante; and as to variation of the place of detention see PARA 1075 ante.

12 *Ibid* s 1(3).

13 See the National Assistance Act 1948 s 47(4); and the National Assistance (Amendment) Act 1951 s 1(4) (a). The National Assistance Act 1948 s 47(6) (see PARA 1075 text and note 6 ante), which permits the making of an application for revocation after the expiration of six clear weeks from the making of an order, does not apply to an order made under the National Assistance (Amendment) Act 1951 s 1: s 1(4)(a).

14 See notes 11, 13 *supra*.

15 Ie the National Assistance Act 1948 s 47 (as amended) (see PARAS 1074-1075 ante, 1077-1078 post).

16 See the National Assistance (Amendment) Act 1951 s 1(4).

UPDATE

1074-1078 Removal to suitable premises of persons in need of care and attention ... Recovery of cost of maintenance of persons removed

These provisions do not apply to a person ('P') where either (1) an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of the Mental Capacity Act 2005 Sch A1) (see MENTAL HEALTH) to provide P with proper care and attention; or (2) an authorisation under Sch A1 is in force, or the managing authority of a hospital or care home is under a duty under Sch A1 para 24 to request a standard authorisation, and P is, or would be, the relevant person in relation to the authorisation: National Assistance Act 1948 s 47(1A)-(1C) (added by Mental Health Act 2007 Sch 9 para 12).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1077. Offences.

1077. Offences.

Any person who wilfully disobeys, or obstructs the execution of, a removal order¹ is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale². Such offences³ may be prosecuted by the appropriate authorities⁴.

¹ I.e. an order under the National Assistance Act 1948 s 47 (as amended): see PARAS 1074-1076 ante.

² See *ibid* s 47(11) (amended by the Criminal Law Act 1977 s 31(6)(a); and the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 1014 note 11 ante.

³ I.e. offences under the National Assistance Act 1948 s 47(11) (as amended: see note 2 *supra*).

⁴ *Ibid* s 56(3) (substituted by the Local Government Act 1972 s 195(6), Sch 23 para 2(13)). As to the appropriate authority see PARA 1074 note 5 ante.

UPDATE

1074-1078 Removal to suitable premises of persons in need of care and attention ... Recovery of cost of maintenance of persons removed

These provisions do not apply to a person ('P') where either (1) an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of the Mental Capacity Act 2005 Sch A1) (see MENTAL HEALTH) to provide P with proper care and attention; or (2) an authorisation under Sch A1 is in force, or the managing authority of a hospital or care home is under a duty under Sch A1 para 24 to request a standard authorisation, and P is, or would be, the relevant person in relation to the authorisation: National Assistance Act 1948 s 47(1A)-(1C) (added by Mental Health Act 2007 Sch 9 para 12).

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1078. Recovery of cost of maintenance of persons removed.

1078. Recovery of cost of maintenance of persons removed.

Where in pursuance of a removal order¹ a person is maintained neither in hospital accommodation provided by the Secretary of State² nor in premises where accommodation is provided by, or by arrangement with, a local authority³, the cost of his maintenance must be borne by the appropriate authority⁴. Any expenditure thus incurred is recoverable from the person maintained or from any person who is liable to maintain him⁵.

1 Ie an order under the National Assistance Act 1948 s 47 (as amended): see PARAS 1074-1076 ante.

2 Ie under the National Health Service Act 1977: see the National Assistance Act 1948 s 47(8) (as amended: see note 4 infra); and HEALTH SERVICES. Section 47(8) (as amended) refers to the Minister of Health, whose functions have been transferred to the Secretary of State for Health, and references to the minister are to be read as references to the Secretary of State: see the Secretary of State for Social Services Order 1968, SI 1968/1699, and the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843. As to the Secretary of State see PARA 1001 note 6 ante.

3 Ie under the National Assistance Act 1948 Pt III (ss 21-36) (as amended) (see PARA 1029 et seq ante): see s 47(8) (as amended: see note 4 infra). See also PARA 1030 note 3 ante. As to the meaning of 'local authority' see PARA 1005 ante.

Any expenditure incurred by virtue of s 47 (as amended) in connection with the maintenance of a person in premises where accommodation is provided under Pt III (as amended) is recoverable in like manner as expenditure incurred in providing accommodation under Pt III (as amended): s 47(9). As to the recovery of expenditure incurred under Pt III (as amended) see PARA 1039 ante.

4 Ibid s 47(8) (amended by the National Health Service Act 1977 s 129, Sch 15 para 7). As to the appropriate authority see PARA 1074 note 5 ante.

5 National Assistance Act 1948 s 47(9). As to the liability to maintain see PARA 1040 ante.

UPDATE

1074-1078 Removal to suitable premises of persons in need of care and attention ... Recovery of cost of maintenance of persons removed

These provisions do not apply to a person ('P') where either (1) an order of the Court of Protection authorises the managing authority of a hospital or care home (within the meaning of the Mental Capacity Act 2005 Sch A1) (see MENTAL HEALTH) to provide P with proper care and attention; or (2) an authorisation under Sch A1 is in force, or the managing authority of a hospital or care home is under a duty under Sch A1 para 24 to request a standard authorisation, and P is, or would be, the relevant person in relation to the authorisation: National Assistance Act 1948 s 47(1A)-(1C) (added by Mental Health Act 2007 Sch 9 para 12).

1078 Recovery of cost of maintenance of persons removed

NOTE 2--Reference to the National Health Service Act 1977 is now to the National Health Service Act 2006 or the National Health Service (Wales) Act 2006: National Assistance Act 1948 s 47(8) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 9).

TEXT AND NOTE 5--1948 Act s 47(9) amended: Health and Social Care Act 2008 s 147(1),
Sch 15 Pt 5.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/6. REMOVAL OF PERSONS AND PROTECTION OF PROPERTY/1079. Protection for property of persons admitted to hospitals, etc.

1079. Protection for property of persons admitted to hospitals, etc.

Where a person is admitted as a patient to any hospital¹, or is admitted to accommodation provided under Part III of the National Assistance Act 1948², or is removed to any other place under a removal order³, and it appears to the council⁴ that there is danger of loss of, or damage to, any movable property of his by reason of his temporary or permanent inability to protect or deal with the property, and that no other suitable arrangements have been or are being made for these purposes, it is the council's duty to take reasonable steps to prevent or mitigate the loss or damage⁵. For the purpose of discharging this duty, the council has power at all reasonable times⁶ to enter any premises⁷ which immediately before the person's admission or removal were his place of residence or usual place of residence, and to deal with any movable property of his in any way which is reasonably necessary to prevent or mitigate its loss or damage to it⁸. The council may recover⁹ from the person admitted or removed, or from any person who is liable to maintain him¹⁰, any reasonable expenses incurred by it in relation to him under these provisions¹¹.

Where an officer of a council, with the permission of the council, applies for appointment as receiver¹² for a patient¹³ or as a person otherwise having functions in relation to the property and affairs of a patient, the council may defray any expenses incurred by him in connection with the application or the exercise of such functions, in so far as those expenses are not recoverable by him from any other source¹⁴.

1 National Assistance Act 1948 s 48(1)(a). As to the meaning of 'hospital' see PARA 1032 note 3 ante.

2 *Ibid* Pt III (ss 21-36) (as amended) (see PARA 1029 et seq ante): s 48(1)(b). See PARA 1030 note 3 ante.

3 *Ibid* under an order made under *ibid* s 47(3) (see PARA 1074 ante): s 48(1)(c).

4 For these purposes, 'council' means, in relation to any property, the council which is the local authority for the purposes of the Local Authority Social Services Act 1970 (see PARA 1005 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq) and in the area of which the property is for the time being situated: National Assistance Act 1948 s 48(4) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 2(10)).

5 National Assistance Act 1948 s 48(1).

6 What is a reasonable time is a question of fact and depends on the circumstances of the particular case: see TIME vol 97 (2010) PARA 349.

7 As to entry and inspection see PARA 1033 note 2 ante.

8 National Assistance Act 1948 s 48(2).

9 As to methods of recovery see PARA 1039 ante.

10 As to the liability to maintain see PARA 1040 ante.

11 National Assistance Act 1948 s 48(3).

12 *Ibid* under the Mental Health Act 1983 Pt VII (ss 93-113) (as amended): see the National Assistance Act 1948 s 49 (as amended: see note 14 infra); and the Interpretation Act 1978 s 17(2)(a). As to the appointment of receivers see MENTAL HEALTH vol 30(2) (Reissue) PARA 704 et seq. As to the management of property and affairs of persons who are incapable of managing them by reason of mental disorder see MENTAL HEALTH vol 30(2) (Reissue) PARA 671 et seq. For the meaning of 'mental disorder' see MENTAL HEALTH vol 30(2) (Reissue) PARA 402.

13 For the meaning of 'patient' for these purposes see MENTAL HEALTH vol 30(2) (Reissue) PARA 681.

14 National Assistance Act 1948 s 49 (amended by the Mental Health Act 1959 s 149(1), Sch 7 Pt I; and the Local Government Act 1972 s 195(6), Sch 23 para 2(11)).

UPDATE

1079 Protection for property of persons admitted to hospitals, etc

TEXT AND NOTES 9-11--1948 Act s 48(3) amended: Health and Social Care Act 2008 s 147(1), Sch 15 Pt 5.

TEXT AND NOTE 14--1948 Act s 49 further amended: Mental Capacity Act 2005 Sch 6 para 6.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/7. RESETTLEMENT/(1) POLISH RESETTLEMENT/1080. Assistance for displaced Poles.

7. RESETTLEMENT

(1) POLISH RESETTLEMENT

1080. Assistance for displaced Poles.

The Secretary of State¹ may provide accommodation in camps, hostels or other establishments for persons in Great Britain² being of any of certain categories³, or dependants of persons of any of those categories or of members of any of the Polish resettlement forces serving therewith, or persons formerly dependent on a person who was of any of those categories, or was such a member of any of those forces, at that former time⁴. The Secretary of State may make provision for meeting the needs (other than medical, surgical, optical, aural, dental or educational needs⁵) and for promoting the welfare of persons for whom accommodation is so provided; and he may make such provision in such manner as appears to him most convenient, whether by providing goods or services, or by making payments to others for the provision of them, or partly in one of those ways and partly in the other⁶. The Secretary of State may from time to time fix scales of charges⁷ for benefits provided⁸, and require payments for benefits to be made⁹. Provisions relating to recovery of benefit and to false representations¹⁰ apply to the benefits paid under the Polish Resettlement Act 1947¹¹.

The Secretary of State¹² may provide such services and do such things as appear to him to be requisite for meeting the needs as to mental or bodily health of persons falling within these provisions¹³; and the Secretary of State¹⁴ may also, for meeting the educational needs of such persons, provide any such services and do any such things as a local education authority or the Secretary of State is authorised or required to provide or do, or may be authorised or required to provide or do, by or under the Education Act 1996¹⁵.

The Secretary of State may make arrangements with any government department or other authority or person for the provision of benefits or services or the doing of things under the Polish Resettlement Act 1947, on his behalf and at his expense, by that authority or person¹⁶. The expenses of the Secretary of State under the provisions relating to health and educational services must be defrayed out of moneys provided by Parliament¹⁷.

The Polish Resettlement Act 1947 also provides for the making of a scheme¹⁸ for facilitating the emigration of persons falling within these provisions¹⁹; and the expenses are to be defrayed out of moneys provided by Parliament²⁰.

1 The legislation originally referred to the Assistance Board, but its functions are now carried out by the Secretary of State: see the Ministry of Social Security Act 1966 s 39(1), Sch 6 para 3 (repealed); and the Social Security Act 1980 s 20(1), Sch 4 para 1(1)(a). As to the Secretary of State see PARA 1001 note 6 ante.

2 For the meaning of 'Great Britain' see PARA 1003 note 2 ante.

3 The categories are: (1) Poles whose registration under the Aliens Order 1920, SR & O 1920/448 (revoked) took place on or after 1 September 1939, and who have been permitted to enter, or to remain in, the United Kingdom in view of circumstances attributable to war, as to which, in case of doubt, a certificate of the Secretary of State is conclusive; (2) former members of any of the forces mentioned in the Polish Resettlement Act 1947 s 1(1) (ie the Polish naval detachment mentioned in the agreement made between the United Kingdom government and the government of Poland on 18 November 1939, the Polish armed forces organised and employed under British command in pursuance of the agreement made between those governments on 5 August 1940, and the Polish resettlement forces), and members of any of those forces relegated from service therewith; (3) wives of men in head (1) or (2) supra, and any woman who, having been the wife of a man of

either of those categories, has ceased so to be, and has not remarried; (4) persons who have been permitted to enter the United Kingdom on or after 1 September 1939, as being followers of a body of Polish forces entering the United Kingdom and dependent thereon or on members thereof, as to which, in case of doubt, a certificate of the Secretary of State is conclusive: Polish Resettlement Act 1947 s 2(2).

'Pole' means a person registered under the Aliens Order 1920, SR & O 1920/448 (revoked) as being a Pole; and 'Polish resettlement forces' means the Polish Re-Settlement Corps, the Polish Re-Settlement Corps (Royal Air Force), the Polish Re-Settlement Section of the Auxiliary Territorial Service, and the Polish Re-Settlement Section of the Women's Auxiliary Air Force: Polish Resettlement Act 1947 s 10(1). For the meaning of 'United Kingdom' see PARA 1003 note 2 ante. References in the Polish Resettlement Act 1947 to any other enactment must, unless the context requires (sic), be construed as references to that enactment as amended by or under any other enactment and references to the Aliens Order 1920, SR & O 1920/448, must be construed as references to that Order as for the time being in force and to any Order substituted for it: see the Polish Resettlement Act 1947 s 10(2). The Aliens Order 1920, SR & O 1920/448, was revoked and replaced by the Aliens Order 1953, SI 1953/1671 (lapsed).

As to pensions for certain members of the former Polish forces see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 617.

4 Polish Resettlement Act 1947 s 3(1) (amended by the Ministry of Social Security Act 1966 s 39(1), Sch 6 para 3 (repealed); and the Social Security Act 1980 s 20(1), Sch 4 para 1(1)(a)).

5 As to the provision of health services see the text and notes 12-13 infra. As to the provision of educational services see the text and notes 14-15 infra.

6 Polish Resettlement Act 1947 s 3(2) (amended by the Ministry of Social Security Act 1966 Sch 6 para 3 (repealed); the Social Security Act 1980 s 21(4), Sch 4 para 1(1)(a), (b), Sch 5 Pt II; and the National Assistance (Adaptation of Enactments) Regulations 1950, SI 1951/174, reg 2, Schedule).

7 Ie such scales of charges applicable in different circumstances as appear to the Secretary of State, with the approval of the Treasury, to be appropriate: see the Polish Resettlement Act 1947 s 3(6) (as amended: see note 9 infra).

8 Ie under *ibid* s 3 (as amended).

9 Ie in accordance with the provisions of *ibid* s 3(6), Schedule Pt II (both as amended): see s 3(6) (amended by the Ministry of Social Security Act 1966 Sch 6 para 3 (repealed); and the Social Security Act 1980 Sch 4 para 1(1)(a)).

10 Ie the Social Security Administration Act 1992 s 71 (as amended); ss 106, 112: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 385 et seq, 398, 404.

11 See the Polish Resettlement Act 1947 s 3(7), (8), (9) (as amended); and the Social Security (Consequential Provisions) Act 1992 s 2(4).

12 The Polish Resettlement Act 1947 s 4 referred to the Minister of Health, whose functions are now carried out by the Secretary of State for Health: see the Secretary of State for Social Services Order 1968, SI 1968/1699; the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 463-464. See also PARA 1001 note 6 ante.

13 Ie persons for whom the Secretary of State has power to provide accommodation under the Polish Resettlement Act 1947 s 3 (as amended) (see the text and notes 3-4 supra): see s 4(1) (as amended); and HEALTH SERVICES vol 54 (2008) PARA 40. For these purposes, references to persons for whom the Secretary of State has power to provide accommodation include references to persons in Northern Ireland of any description for whom he would have power so to provide if those persons were in Great Britain: see s 12(1), (3) (substituted by the Social Security Act 1980 Sch 4 para 1(2)).

14 The Polish Resettlement Act 1947 s 6 referred to the Minister of Education, whose functions are now carried out by the Secretary of State for Education and Employment: see the Secretary of State for Education and Science Order 1964, SI 1964/490; the Transfer of Functions (Science) Order 1992, SI 1992/1296; the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 448. See also PARA 1001 note 6 ante.

15 See the Polish Resettlement Act 1947 s 6(1) (amended by the Statute Law Revision Act 1953 (repealed); and the Social Security Act 1980 Sch 4 para 1(2); and see note 14 supra); and the Interpretation Act 1978 s 17(2)(a). See EDUCATION.

16 See the Polish Resettlement Act 1947 s 3(3) (amended by the Ministry of Social Security Act 1966 Sch 6 para 3 (repealed); and the Social Security Act 1980 Sch 4 para 1(1)(a)); Polish Resettlement Act 1947 ss 4(2), 6(2). See also notes 12, 14 supra.

17 Ibid ss 4(3), 6(3). See also notes 12, 14 supra.

18 The powers under ibid s 7 were originally given to the Minister of Labour and National Service, later the Minister of Labour (see the Minister of Labour Order 1959, SI 1959/1769; and the Ministry of National Service (Dissolution) Order 1959, SI 1959/170); and employment functions are now mainly divided between the Secretary of State for Education and Employment and the Secretary of State for Trade and Industry (see the Secretary of State for Employment and Productivity Order 1968, 1968/729; the Secretary of State for Trade and Industry Order 1970, SI 1970/1537; the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 448 et seq, 505 et seq). See also PARA 1001 note 6 ante.

A scheme made under the Polish Resettlement Act 1947 s 7 (as amended) may be varied or revoked: see s 7(2).

19 The persons for whom the Secretary of State has power to provide accommodation under ibid s 3 (as amended) (see the text and notes 3-4 supra): see s 7(1) (amended by the Social Security Act 1980 Sch 4 para 1(2); and see note 18 supra). For these purposes, references to persons for whom the Secretary of State has power to provide accommodation include references to persons in Northern Ireland of any description for whom he would have power so to provide if those persons were in Great Britain: see the Polish Resettlement Act 1947 s 12(1), (3) (as substituted: see note 13 supra). Arrangements for facilitating removal do not, however, extend to (1) members of any of the Polish resettlement forces relegated from service therewith; (2) former members of any of those forces emigrating immediately on their discharge therefrom; or (3) dependants of any such members or former members: s 7(1) proviso.

20 See ibid s 7(3).

UPDATE

1080 Assistance for displaced Poles

NOTE 3--Polish Resettlement Act 1947 ss 1(1), 2(2) amended: Civil Partnership Act 2004 Sch 26 paras 17, 18.

NOTE 13--1947 Act s 4(1) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 4.

NOTES 14, 15--1947 Act s 6 repealed: Statute Law (Repeals) Act 2004.

NOTE 18--Polish Resettlement Act 1947 s 7 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/SOCIAL SERVICES AND COMMUNITY CARE (VOLUME 44(2) (REISSUE))/7. RESETTLEMENT/(2) RESETTLEMENT UNDER THE JOBSEEKERS ACT 1995/1081. Grants for resettlement places.

(2) RESETTLEMENT UNDER THE

1081. Grants for resettlement places.

The Secretary of State¹ may pay such grants, to such persons, as he considers appropriate in relation to expenditure in connection with the provision or maintenance of resettlement places². Any such grant may be made on such terms and subject to such conditions as the Secretary of State considers appropriate³, and must be paid out of money provided by Parliament⁴.

1 As to the Secretary of State see PARA 1001 note 6 ante.

2 Jobseekers Act 1995 s 30(1). 'Resettlement places' means places at which persons without a settled way of life are afforded temporary accommodation with a view to assisting them to lead a more settled life: s 30(2). As to provisions relating to jobseekers generally see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 258 et seq.

3 Ibid s 30(3).

4 Ibid s 30(5). Any sums received by the Secretary of State by way of the repayment of any such grant must be paid by him into the Consolidated Fund: s 30(6). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

UPDATE

1081 Grants for resettlement places

TEXT AND NOTES--The functions of the Secretary of State under the 1995 Act s 30, so far as they are exercisable in relation to Wales, are transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1.